

**PALA BAND OF MISSION INDIANS  
ENVIRONMENTAL ORDINANCE**

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## CHAPTER 1. GENERAL PROVISIONS

### **1001. Title**

This Ordinance shall be known as the “Pala Environmental Ordinance” or “Environmental Ordinance.”

### **1002. Findings and Declarations**

The General Council of the Pala Band of Mission Indians finds and declares that:

(a) Protecting and enhancing environmental and natural resources within the Pala Indian Reservation are essential to protecting and promoting the political integrity, economic security, health, safety, and welfare of the Pala Band of Mission Indians.

(b) Federal and state laws do not adequately regulate impacts to environmental and natural resources within the Pala Reservation on behalf of the Pala Band of Mission Indians.

(c) A lack of adequate laws to regulate persons and activities that may affect the environmental and natural resources within the Pala Reservation presents a threat to the political integrity, economic security, health, safety, and welfare of the Pala Band of Mission Indians.

(d) The Pala Band of Mission Indians, pursuant to its inherent sovereignty and federal law, possesses the authority to provide for the comprehensive regulation of persons and activities that may use or impact environmental and natural resources within the exterior boundaries of the Pala Reservation.

### **1003. Purpose**

The purpose of the Pala Environmental Ordinance is to regulate persons and activities that may impact environmental and natural resources within the Pala Indian Reservation.

### **1004. Authority**

This Ordinance is adopted by the General Council of the Pala Band of Mission Indians pursuant to the authority granted by paragraph C of Article 3, § 2 of the Constitution of the Pala Band of Mission Indians.

### **1005. Applicability**

This Ordinance applies to all persons and activities within the Pala Indian Reservation, or who are otherwise subject to tribal jurisdiction under the Pala Tribal Constitution and/or federal law. This includes non-members and activities conducted on privately owned lands within the exterior boundaries of the Reservation where there is:

- (1) A threat, or direct effect on the political integrity, economic security, health, safety, welfare, or other fundamental interest of the tribe; or
- (2) A consensual relationship between the non-member and the PBMI.

**1006. Regulations**

(a) Regulations may be adopted by the Pala Executive Committee to administer, implement, enforce, or clarify the purposes and provisions of the Pala Environmental Ordinance.

(b) Regulations adopted pursuant to the Environmental Ordinance shall be consistent with the Environmental Ordinance and shall retain all requirements, definitions, and provisions of the Environmental Ordinance.

(c) A violation of any Regulation adopted pursuant to the Environmental Ordinance shall be considered a violation of the Environmental Ordinance.

(d) Regulations shall only be adopted following a public review and comment process, as follows:

- (1) Proposed regulations shall be provided electronically or, if requested, in hard copy for review by the public at no cost.
- (2) PBMI shall provide notice to the public of the availability of proposed regulations for review. Notice shall be effected by prominent posting at the Pala Administrative Building and the Pala Environmental Department of the opening of a comment period and by posting on the PBMI website.
- (3) Written comments on a proposed regulation shall be accepted by PBMI for at least 30 days following the notice of availability. A public hearing may be held if the Pala Executive Committee, in its discretion, determines that a hearing is in the public interest.
- (4) If PBMI finalizes the proposed regulations, PBMI shall respond to all substantive issues raised in any public comments in a final regulation notice.
- (5) PBMI shall provide notice of a final regulation in the same manner as a proposed regulation under paragraph (2).

**1007. Public Inspection**

A current file containing this Ordinance and all regulations adopted under this Ordinance shall be available for public inspection and copying at reproduction cost during regular business hours at the reception desk of the Pala Administration Building and the Pala Environmental Department.

**1008. Records**

(a) The Administrator may require by order, permit, or regulation that any person subject to this Ordinance establish and maintain records in a form and manner prescribed by the Administrator.

(b) All records required under this Ordinance shall be made available to the Administrator for inspection upon request.

**1009. Modular Approach to Environmental Regulation**

(a) The Pala Band is committed to providing a clean environment to ensure the health, welfare, and safety of Pala Reservation residents. Pursuant to the federal environmental statutes and the regulations thereunder cited in this Ordinance, however, it is discretionary with the Pala Band as to whether and which federal programs to implement on behalf of the federal government, and in what order. The Administrator shall determine which programs are essential for Tribal implementation, and of those programs shall determine which should be developed first. The Administrator may also determine that only parts of such federal programs are essential, and may develop these severable portions, as provided in the relevant federal environmental statutes and regulations.

(b) The Administrator shall not be required to implement any of the federal programs described in this chapter by any particular time. However, once the Administrator determines that a particular program or portion of a program should be developed, the Administrator must comply with all of the relevant statutory and regulatory requirements for that program or portion of a program.

**1010. Repealer**

Any other prior laws, rules, ordinances, regulations, or resolutions of the Pala Band of Mission Indians are hereby repealed to the extent that they are inconsistent with this Ordinance.

**1011. Rules of Construction**

(a) This Ordinance shall be liberally construed to carry out its purpose. The effectiveness and enforceability of this Ordinance shall not be dependent upon the adoption of any regulations unless otherwise required by law. Nothing contained in this Ordinance or regulations promulgated hereunder shall be construed to diminish, limit, or otherwise adversely affect any right or remedy held by or available to the Pala Band of Mission Indians.

(b) Where a reference in this Ordinance is made to a paragraph, subparagraph, clause, or provision, the reference shall refer to the paragraph, subparagraph, clause, or provision within the same Section unless otherwise indicated.

(c) Where a reference in this Ordinance is made to “law” or “laws,” it shall include any regulations promulgated thereunder.

(d) Where a paragraph, subparagraph, clause, or provision includes a requirement to comply with a title, chapter, ordinance, article, paragraph, subparagraph, clause, or provision of Tribal law, the requirement to comply shall include any regulation adopted or permit issued thereunder.

**1012. Severability**

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of the Environmental Ordinance are declared severable.

**1013. Sovereign Immunity Preserved**

Nothing contained in this Ordinance shall constitute, or be construed to be, a waiver of the sovereign immunity of the Pala Band of Mission Indians, its officers, employees, agents, or enterprises.

**1014. Effective Date**

The effective date of the Pala Environmental Ordinance shall be the date the Ordinance is enacted and adopted by the General Council in accordance with the Constitution of the Pala Band of Mission Indians.

**1015. Amendments**

(a) Any clerical, administrative, and non-substantive amendments to this Ordinance may be approved by the Executive Committee.

(b) Any substantive amendments to this Ordinance must be approved by the General Council in accordance with the Constitution of the Pala Band of Mission Indians.

**1016. Definitions**

For the purposes of this Ordinance the following words and phrases shall have the following meanings:

(a) ADMINISTRATOR means the entity tasked with implementing the Pala Environmental Ordinance. The Administrator is the Pala Environmental Department as directed by the Pala Environmental Director, except that the Executive Committee may delegate Administrator responsibilities partially or in their entirety to other departments or entities by regulation.

(b) EXECUTIVE COMMITTEE means the Executive Committee of the Pala Band of Mission Indians as defined in the Constitution of the Pala Band of Mission Indians.

(c) C.F.R. means the United States Code of Federal Regulations.

(d) GENERAL COUNCIL means the General Council of the Pala Band of Mission Indians as defined in the Constitution of the Pala Band of Mission Indians.

(e) MAY is used to indicate a discretionary requirement.

(f) MOTOR VEHICLE means a vehicle that is self-propelled or as defined by the California Vehicle Code.

(g) PALA BAND OF MISSION INDIANS (“PBMI” or “Tribe”) means the federally recognized Indian tribe, the Pala Band of Mission Indians.

(h) PALA ENVIRONMENTAL DEPARTMENT (“PED”) means the agency within the Pala Band of Mission Indians Tribal Government that is responsible for administering environmental matters on behalf of the Tribe.

(i) PALA RESERVATION or RESERVATION means the Reservation of the Pala Band of Mission Indians. The Pala Reservation includes all trust, allotted, and other tribal lands held by or on behalf of the Pala Band of Mission Indians. The Pala Reservation also includes all lands, waters, and air located within the exterior boundaries of the Reservation, including fee lands. The Pala Reservation does not include any fee lands located outside the exterior boundaries of the Pala Reservation.

(j) PEB means the Pala Environmental Board.

(k) PERSON means any individual, firm, public or private corporation, association, organization, partnership, trust, estate, company, contractor, supplier, installer, user or owner, government, including any government agency or other government department or division, municipality, public district, political subdivision, or any other legal entity or its legal representatives, agents, or assigns.

(l) REGULATION means a regulation promulgated pursuant to the Pala Environmental Ordinance, unless otherwise indicated.

(m) SHALL is used to indicate a mandatory requirement.

(n) TRIBAL COURT shall mean the Pala Tribal Court.

(o) U.S.C. means the United States Code.

(p) U.S. EPA means the United States Environmental Protection Agency.

## CHAPTER 2. ADMINISTRATION

### ARTICLE 1. PALA ENVIRONMENTAL BOARD

#### **2101. Establishment of an Environmental Board**

A six (6) member Pala Environmental Board (PEB) is hereby established.

#### **2102. Powers and Duties**

(a) The PEB is the Administrative Review body for the Pala Environmental Ordinance.

(b) The PEB shall have the authority, responsibility, and jurisdiction to conduct an adjudicatory hearing under the Pala Environmental Ordinance to decide whether a violation has occurred. If the PEB determines that a violation has occurred, the PEB shall decide the remedies, penalties, and damages to be imposed upon the person or persons that caused or allowed the violation of the Pala Environmental Ordinance.

(c) The PEB shall have the authority, responsibility, and jurisdiction to hear and decide administrative appeals of final decisions made by the Administrator under the Pala Environmental Ordinance regarding the following:

- (1) An Environmental Review determination made under § 3007;
- (2) The approval, denial, modification, renewal, or revocation of a permit; and
- (3) A notice of violation, enforcement order, penalty, remedy, or damages.

(d) In a hearing conducted pursuant to paragraph (b), the PEB shall have the authority to affirm, overturn, stay, or modify a final decision made by the Administrator regarding a permit, notice of violation, enforcement order, penalty, remedy, or damages that has been appealed and is the subject of the hearing.

(e) The PEB shall have the authority and responsibility to review, revise, and, if approved by the PEB, recommend for adoption by the Executive Committee the following:

- (1) Regulations drafted and proposed by the Administrator pursuant to the provisions of the Pala Environmental Ordinance; and
- (2) Intergovernmental agreements drafted and proposed by the Administrator for the purposes of administering, enforcing, or implementing the Pala Environmental Ordinance.

(f) The PEB shall establish such policies and procedures, consistent with the provisions of this Section, that are necessary to govern the conduct of the Board.

(g) The PEB shall use the latest edition of Robert's Rules of Order as a guide in conducting PUB meetings and hearings, to the extent that the rules do not conflict with this Ordinance.

#### **2103. Appointment, Terms, Chairperson Powers and Duties**

(a) All members of the Pala Environmental Board shall be appointed by the Executive Committee. At least one (1) of the Board members shall be an enrolled member of the Pala Band of Mission Indians.

(b) Each Board member shall serve for a term of two (2) years, provided that, in order to stagger the terms of office, three (3) of the original Board members shall be appointed for a term of one (1) year and three (3) of the original Board members shall be appointed for a term of two (2) years. A vacancy on the Board, regardless of the cause, will be filled by the appointment procedure set forth in this Section, provided that any appointment that does not begin coincident with the staggered terms will be shortened as necessary to maintain the staggered terms.

(c) PEB members may be removed prior to the expiration of their term for any reason at the discretion of the Executive Committee.

(d) PEB members may serve as many consecutive or non-consecutive terms as deemed appropriate by the Executive Committee.

(e) The Executive Committee may appoint standing alternates for the PEB members to act in case of recusal or other unavailability of PEB members.

(f) Upon formation and whenever any of the positions are vacant, the PEB members shall meet and elect a Chairperson, Vice Chairperson, and Secretary from its members.

(g) The Chairperson shall have the power to call and preside over all meetings and hearings of the PEB.

(h) The Vice Chairperson shall assume the powers and duties of the Chairperson whenever the Chairperson is absent or otherwise unable to perform his or her powers and duties.

(i) The Secretary shall keep or cause to be kept a written record for all formal meetings and hearings held by the PEB. The Secretary shall distribute or cause to be distributed the final approved record of each meeting or hearing to the parties and within the timeframe provided by this Ordinance.

(j) If the Secretary is not present at a meeting or hearing, the Chairperson shall designate a temporary Secretary, limited to the duration and purposes of that meeting or hearing.

(k) In the absence of a formally established Pala Environmental Board with at least five (5) appointed Board members with the ability to vote on a relevant matter, the Executive Committee will act as the Pala Environmental Board, with the Executive Committee Chairperson serving as the PEB Chairperson, the Executive Committee Vice Chairperson serving as the PEB Vice Chairperson, and the Executive Committee Secretary serving as the PEB Secretary.

#### **2104. Meetings and Hearings**

(a) The PEB shall hold meetings and hearings as necessary to fulfill its responsibilities under this Article.

(b) PEB meetings and hearings may be called by the Chairperson or by a majority of the Board members.

(c) A proposed meeting agenda shall be prepared by the Secretary, distributed to all PEB members prior to the meeting, and is subject to the approval of a majority of the PEB members by vote at the meeting.

(d) The PEB shall provide the Administrator with a minimum of seven (7) days' notice prior to a PEB meeting, unless the Administrator agrees in writing to waive this notice requirement in order to expedite the meeting. The PEB shall prominently post public notice of the meeting at the Pala Administrative Building on the same day the PEB notifies the Administrator.

(e) The PEB shall provide the Administrator and all other parties to a PEB hearing a minimum of seven (7) days' notice prior to the hearing, unless the Administrator and all parties to the hearing agree in writing to waive this notice requirement in order to expedite the hearing. The PEB shall prominently post public notice of the hearing at the Pala Administrative Building on the same day the PEB notifies the Administrator.

(f) A written record that reports the date, time, attendees, votes, decisions, agenda, topics, summaries or discussions, and other essential information shall be kept by the Secretary for each PEB meeting and hearing. This written record shall be formally reviewed and approved by the PEB no later than the next meeting and distributed to the Executive Committee, Administrator, and all other parties to a hearing within 14 days of approval.

## **2105. Quorum and Voting**

(a) Five (5) members of the PEB shall constitute a quorum. A quorum is necessary for the PEB to take official action.

(b) The Chairperson shall vote only in the case of a tie vote.

(c) All actions of the PEB shall be taken by majority vote, a quorum being present.

(d) Any action taken by the PEB during a meeting shall be recorded in writing in the official record for the meeting or hearing.

(e) A member shall be recused from voting on a particular issue under the following circumstances:

- (1) If the member has a direct financial interest in the outcome of the matter or issue;
- (2) If the matter at issue involves the member's own official conduct; or
- (3) If a member has such close personal ties to a person involved in or subject to the issue, that the member cannot reasonably be expected to exercise sound judgment in the public interest.



(f) If as a result of recusals under paragraph (e), the PEB lacks a quorum to take action in a particular case, the Executive Committee shall:

- (1) Appoint additional member(s) to serve on the PEB on a temporary basis; or
- (2) Temporarily serve as the PEB pursuant to paragraph 2103(k).

## **ARTICLE 2. ENVIRONMENTAL ORDINANCE ADMINISTRATOR**

### **2201. Designation of an Environmental Ordinance Administrator**

The Administrator of this Ordinance shall be the Pala Environmental Department as directed by the Pala Environmental Department Director, except that the Executive Committee may delegate Administrator responsibilities partially or in their entirety to other entities or departments by regulation.

### **2202. Powers and Duties**

(a) The Administrator shall have the authority and responsibility to administer, implement, and enforce the provisions of the Pala Environmental Ordinance.

(b) The Administrator shall have the authority and responsibility to draft and propose regulations to administer, implement, enforce, and clarify the purposes and provisions of the Pala Environmental Ordinance. The Administrator shall submit proposed regulations to the Pala Environmental Board for review, revision, and recommendation to the Executive Committee for approval.

(c) The Administrator may delegate any of the Administrator's powers and duties to any officer or employee of the PBMI Tribal Government, PBMI authorized contractor, or PBMI Executive Committee approved representative of a non-PBMI agency. The Administrator shall retain the right to exercise or withdraw any of the delegated authorities at the Administrator's discretion.

(d) The Administrator may work cooperatively with other tribal, federal, state, county, and municipal governments to:

- (1) Coordinate activities and cooperate with other governments that have similar or related responsibilities within their respective jurisdictions; and
- (2) Draft and propose intergovernmental agreements to the Pala Environmental Board as necessary for optimal coordination, cooperation, and assistance in administering, implementing, or enforcing the Pala Environmental Ordinance.

### **2203. Environmental Protection Fund**

(a) The Administrator shall create and administer an Environmental Protection Fund. Any fees or penalties collected under this Ordinance by the Tribe shall be deposited with the PBMI Tribal Government and credited to the Environmental Protection Fund.

(b) The Environmental Protection Fund shall be used for expenses related to any of the following:

- (1) Administering, implementing, enforcing, or otherwise effecting the provisions of the Pala Environmental Ordinance;

- (2) Addressing environmental degradation caused by violations of the Pala Environmental Ordinance; and
- (3) Conducting education and outreach for the PBMI community on environmental issues covered by the Pala Environmental Ordinance.

## CHAPTER 3. ENVIRONMENTAL REVIEW

### 3001. Title

This Chapter shall be known and cited as the “Pala Environmental Review Ordinance.”

### 3002. Findings and Declarations

(a) The Executive Committee of the Pala Band of Mission Indians finds and declares that significant environmental impacts resulting from activities within the exterior boundaries of the Pala Reservation threaten the political integrity, economic security, health, safety, and welfare of the Tribe and its members.

(b) The Executive Committee hereby declares that it is the policy of the Pala Band of Mission Indians to protect the natural environment within and surrounding the Pala Reservation, to take affirmative action to restore and enhance environmental quality in areas that have been subject to degradation, and to ensure that no proposed activity that may cause significant environmental degradation be allowed before the completion of an environmental review, in which alternatives and mitigation measures are fully considered.

### 3003. Purpose

The purpose of the Pala Environmental Review Ordinance is to review, reduce, prevent, and control the environmental impacts of activities within the Pala Reservation to protect public health, safety, welfare, and the environment.

### 3004. Definitions

(a) **ACTIVITY** means a development, project, construction, or other action.

(b) **CONSTRUCTION** means any onsite activity that is directly related to building or modifying a structure. It does not include minor repairs to, or painting of, existing structures.

(c) **DEVELOPMENT** means the making of any material change in the use or appearance of any structure or the making of any material change in the use or appearance of any land, including wetlands.

(d) **ENVIRONMENTAL IMPACT** means any change that a project or activity may cause in the environment, whether directly, indirectly, or cumulatively.

(e) **ENVIRONMENTAL ASSESSMENT (EA)** means a document designed to assist the Administrator in determining:

- (1) Whether the environmental impacts of a proposed activity may be significant; and
- (2) Whether an Environmental Impact Statement will be required for the proposed activity.

(f) ENVIRONMENTAL IMPACT STATEMENT (EIS) means a comprehensive and in depth analysis of a proposed activity that may have a significant impact on the environment.

(g) ENVIRONMENTAL REVIEW means an evaluation of environmental impacts through the use of an Environmental Review Checklist, Environmental Assessment, and/or Environmental Impact Statement.

(h) ENVIRONMENTAL PERMIT means the document issued by the Administrator to an applicant after an Environmental Review that contains authorization to proceed with the action and any required special conditions or mitigations.

(i) ENVIRONMENTAL REVIEW CHECKLIST (ERC) means the document used to determine whether an EA, EIS, and/or Environmental Permit will be required for the proposed activity and whether approval(s) from other Pala Departments are required or have been obtained.

(j) MITIGATE and MITIGATION mean to take steps to address an environmental impact in the following sequence, which are listed in order of preference:

- (1) Avoid the impact by not taking certain actions or parts of an action.
- (2) Minimize impacts by limiting the degree or magnitude of the action.
- (3) Rectify the impact by repairing, rehabilitating, or restoring the affected area.
- (4) Compensate for the impact by replacing, enhancing, or providing substitute resources in another area.

(k) PROPOSER means the person or party that is proposing an activity that may have an environmental impact and has submitted an ERC, EA, and/or EIS.

(l) SIGNIFICANT ENVIRONMENTAL IMPACT means an impact or the cumulative impacts of an activity on the environment that is determined to be significant by the Administrator in consideration of environmental, natural resource, health, safety, legal, economic, governmental, and other factors of fundamental interest to the PBMI. A significant impact is an impact which is important, notable, or of consequence, having regard to its context or intensity. Significance depends upon the sensitivity, value, and quality of the environment which is impacted, and upon the intensity, duration, magnitude and geographic extent of the impacts of an activity.

(m) STRUCTURE means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water.

### **3005. Applicability**

This Ordinance applies to all persons and activities within the exterior boundaries of the Pala Indian Reservation that produce or may produce an environmental impact.

### **3006. Requirements**

(a) A person shall not conduct or authorize any activity that may have an environmental impact before completing an Environmental Review that has been approved by the Administrator pursuant to § 3007.

(b) No person shall execute a contract or agreement for services that may have an environmental impact to be performed within the Reservation between the PBMI, including a PBMI-owned commercial or government entity, and a third party before completing an Environmental Review that has been approved by the Administrator pursuant to § 3007.

(c) A person shall not conduct or authorize any development or other activity that, according to an Environmental Review conducted pursuant to § 3007, may have a significant environmental impact without an Environmental Permit issued by the Administrator pursuant to § 3008.

### **3007. Environmental Review**

(a) Any person required to complete an Environmental Review pursuant to § 3006 shall prepare and submit to the Administrator an Environmental Review Checklist in a form and manner required by the Administrator.

(b) Upon review of an Environmental Review Checklist submitted pursuant to paragraph (a), the Administrator may determine that further Environmental Review for the proposed project will be required in the form of:

- (1) An Environmental Assessment; and/or
- (2) An Environmental Impact Statement.

(c) Environmental Assessments and Environmental Impact Statements must be prepared and submitted in a form and manner prescribed by the Administrator.

(d) Within 30 days of receipt of an Environmental Review Checklist (ERC), Environmental Assessment (EA), or Environmental Impact Statement (EIS), the Administrator will review the submitted information and notify the Proposer of the Administrator's determination that:

- (1) The proposed activity may proceed;
- (2) An EA must be prepared and submitted for the proposed activity;
- (3) An EIS must be prepared and submitted for the proposed activity;
- (4) The ERC, EA, or EIS has been rejected as incomplete or improperly filed;
- (5) The proposed activity shall not proceed without an Environmental Permit;
- (6) The proposed activity shall not proceed without an Environmental Permit and one or more other permits under the Environmental Ordinance, as specified by the Administrator; and/or
- (7) The proposed activity shall not proceed because it will cause an unacceptably significant, unavoidable environmental impact that will irreparably harm public health, safety, or welfare, the natural environment, or another fundamental Tribal interest.

(e) In the Administrator's notification to the Proposer under paragraph (d), the Administrator shall notify the Proposer in writing of their right to appeal to the Pala Environmental Board.

(f) Within 60 days of receipt of an appeal of the Administrator's decision under paragraph (d), the PEB shall notify the Proposer and the Administrator of the PEB's determination that:

- (1) The proposed activity may proceed;
- (2) An EA must be prepared and submitted for the proposed activity;
- (3) An EIS must be prepared and submitted for the proposed activity;
- (4) The ERC, EA, or EIS has been rejected as incomplete or improperly filed;
- (5) The proposed activity shall not proceed without an Environmental Permit;
- (6) The proposed activity shall not proceed without an Environmental Permit and one or more other permits under the Environmental Ordinance, as specified by the PEB; and/or
- (7) The proposed activity shall not proceed because it will cause an unacceptably significant, unavoidable environmental impact that will irreparably harm public health, safety, or welfare, the natural environment, or another fundamental Tribal interest.

(g) After making a determination not to proceed under § 3007(d)(7) or (f)(7), the Administrator or the PEB, in their discretion, may refer the matter to the Executive Committee for consideration. The Executive Committee may allow the activity to proceed if it determines that the significant environmental impacts are acceptable in consideration of economic, cultural, environmental, and/or other factors of importance to the PBMI.

(h) During the process of making an Environmental Review determination pursuant to paragraph (f) the PEB may request written clarifying information from the Proposer and the Administrator which shall not exceed the scope of the information that was submitted, or should have been submitted, by the Administrator as part of the formal request for an Environmental Review determination.

(i) When an activity covered under the Pala Environmental Ordinance requires an Environmental Review by a non-PBMI governmental entity, the Administrator may accept an Environmental Assessment, Environmental Impact Statement, or equivalent document prepared for the non-PBMI government entity in lieu of the Environmental Review document required under this Section, provided the document substantially addresses the same elements as required under this Ordinance and all applicable regulations.

### **3008. Environmental Permits**

(a) A person required to obtain an Environmental Permit pursuant to this Article shall file an Environmental Permit application in a manner and form prescribed by the Administrator.

(b) A permit application must include the following information:

- (1) Name, address, and phone number of the applicant;
- (2) Location of the proposed project;
- (3) Plans and specifications for the proposed project; and
- (4) Any other information requested by the Administrator on the operations, inputs, outputs, and potential environmental impact of the proposed project.

(c) The Administrator may issue an Environmental Permit if the Administrator determines:

- (1) The applicant has secured all permits applicable to the proposed activity under the Pala Environmental Ordinance;
- (2) The proposed activity will be conducted in compliance with all applicable permits, standards, and other requirements under the Pala Environmental Ordinance; and
- (3) One or more of the following:
  - (A) The proposed activity will not cause or allow a significant environmental impact;
  - (B) The proposed activity will cause or allow a significant environmental impact, but these impacts will be mitigated to a level of insignificance pursuant to conditions imposed by the Administrator;
  - (C) The proposed activity will cause or allow significant environmental impacts, but these impacts are allowable under one or more permits obtained pursuant to the Pala Environmental Ordinance; or
  - (D) The proposed activity will cause or allow significant environmental impacts, but these impacts will be mitigated pursuant to conditions imposed by the Administrator, and are acceptable in consideration of economic, cultural, environmental, and/or other factors of importance to the PBMI as determined by the Pala Executive Committee.

(d) Permits shall include the following conditions:

- (1) The permittee shall provide the Administrator access to the permittee's property to inspect the permitted project as necessary;
- (2) The permittee shall abate any human health, environmental, and other compliance concerns identified by the Administrator in an inspection;
- (3) The permittee shall comply with all provisions of this Ordinance in the permittee's installation, maintenance, repair, operation, and closure of the permitted project; and
- (4) The permittee shall comply with any site-specific requirements and conditions set by the Administrator for the permitted project.

(e) Where the Administrator or the PEB has denied a permit due to significant environmental impacts that will irreparably harm public health, safety, or welfare, the natural environment, and/or another fundamental Tribal interest, the Administrator or the PEB may refer the matter to the Executive Committee. The Executive Committee may authorize the activity, subject to conditions that mitigate the impact of the activity developed in the Executive Committee's discretion, if it determines that the impacts are acceptable in consideration of economic, cultural, environmental, and/or other factors of importance to the Pala Band of Mission Indians.

(f) The Administrator shall conduct an annual compliance review that includes an onsite inspection, to ensure that an Environmental Permit holder is in compliance with all applicable permits, standards, and other requirements under the Pala Environmental Ordinance. Conditions requiring an annual compliance review shall be included in every Environmental Permit.

(g) When an activity covered under the Pala Environmental Ordinance requires a permit under the Ordinance or a permit issued by a non-PBMI governmental entity, the Administrator may accept the PBMI-issued permit or the permit prepared for the non-PBMI government entity in lieu of the Environmental Permit required under this Section, provided the document substantially addresses the same elements as required under this Ordinance and all applicable regulations.



(h) A person whose application for an Environmental Permit is denied by the Administrator may appeal the denial in accordance with § 12001.

### **3009. Exemptions**

The following activities shall not be subject to this Chapter:

- (1) Construction of one-story buildings accessory to an existing residential use, used as tool and storage sheds, playhouses, gazebos and similar uses, provided the floor area does not exceed 120 square feet;
- (2) Business conducted in the home, except where construction is required;
- (3) An emergency public works project deemed necessary to protect human health, safety, and welfare by the Administrator;
- (4) Any right of way repair or maintenance that does not alter a natural drainage course;
- (5) An open burning activity that is allowable under § 4406 or § 4407;
- (6) Structures in existence prior to the adoption of this Ordinance, except modifications to such structures made after the date of adoption of this Ordinance.

### **3010. Fees**

(a) Any person completing an Environmental Review pursuant to § 3007 may be assessed applicable filing and evaluation fees, including the Administrator's review costs. Regulations may be adopted that establish fees for the filing and evaluation of Environmental Review documents.

(b) Upon request by a project Proposer who must submit an Environmental Review under this Ordinance, the Administrator may, in the Administrator's discretion, perform the Environmental Review on behalf of the Proposer. The Proposer may be assessed the Administrator's costs to perform the Environmental Review.

(c) Any person submitting an Environmental Permit application pursuant to § 3008 may be assessed applicable filing and evaluation fees, including the Administrator's review costs. Regulations may be adopted that establish fees for the filing and evaluation of Environmental Permit applications.

## **CHAPTER 4. PALA AIR QUALITY**

### **ARTICLE 1. GENERAL**

#### **4101. Title**

This Chapter shall be known and cited as the “Pala Air Quality Ordinance.”

#### **4102. Findings and Declarations**

The Pala Band of Mission Indians finds and declares the following:

(a) Impacts to air quality within the Pala Reservation directly affect fundamental interests of the Pala Band of Mission Indians, including the political integrity, economic security, health, safety, and welfare of the Tribe.

(b) The PBMI possesses inherent sovereign authority to regulate persons and activities that affect air quality, including activities conducted by non-members on privately owned land within the exterior boundaries of the Pala Reservation.

(c) It is a primary interest of the PBMI to establish and maintain comprehensive air quality laws, policies, programs, and procedures to reduce, prevent, and control emissions of air pollutants into outdoor ambient air in order to protect public health, safety, and welfare, and to preserve the environment within the Pala Reservation.

#### **4103. Purpose**

The purpose of the Pala Air Quality Ordinance is to reduce, prevent, and control emissions of air pollutants into outdoor ambient air within the exterior boundaries of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

#### **4104. Definitions**

For the purposes of this Chapter the following words and phrases shall have the following meanings:

(a) AIR BASIN means the ambient air or atmosphere, external to buildings and indoor areas, over all lands within a defined geographical area.

(b) AIR POLLUTANT means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant to the extent the Administrator of the U.S. EPA has identified such precursor or precursors for the particular purpose for which the term “air pollutant” is used.

(c) AMBIENT AIR QUALITY STANDARDS means specified concentrations and durations of air pollutants established either by the Tribe, State of California, or the federal government.

(d) PALA AIR BASIN means the air basin over all lands within the exterior boundaries of the Pala Reservation.

(e) CLEAN AIR ACT (CAA) means the Clean Air Act as enacted by the United States Congress and codified at 42 U.S.C. § 7401 *et seq.*

(f) PARTICULATE MATTER (PM) means any airborne material, except uncombined water, which exists in a finely divided form as a liquid or solid at standard conditions.

(g) PM<sub>2.5</sub> means particulate matter with an aerodynamic diameter smaller than or equal to 2.5 microns as measured by the applicable federal reference test method. Sources include, but are not limited to, combustion from motors, power plants, residential wood burning, wildfires, agricultural burning, and some industrial processes.

(h) PM<sub>10</sub> means particulate matter with an aerodynamic diameter smaller than or equal to 10 microns as measured by the applicable federal reference test method. Sources include, but are not limited to, crushing or grinding operations and dust stirred up by wind or vehicles on roads.

(i) SAN DIEGO COUNTY AIR BASIN (SDCAB) means that portion of the air basin containing specific desert portions of Riverside and Imperial Counties, as defined in Title 17, California Code of Regulations, § 60110.

(j) SDAPCD means the San Diego Air Pollution Control District of California.

(k) TITLE V means Title V of the Clean Air Act.

(l) VISIBILITY REDUCING PARTICLES means atmospheric particles which significantly scatter or absorb light.

#### **4105. Applicability**

This Ordinance applies to all persons and activities that affect or may affect air quality within the exterior boundaries of the Pala Indian Reservation.

## ARTICLE 2. AMBIENT AIR QUALITY STANDARDS

### 4201. Pala Ambient Air Quality Standards

(a) Pala Ambient Air Quality Standards (AAQS) may be adopted by regulation for the following pollutants:

- (1) Ozone (O<sub>3</sub>);
- (2) Respirable Particulate Matter (PM<sub>10</sub>);
- (3) Fine Particulate Matter (PM<sub>2.5</sub>);
- (4) Carbon Monoxide (CO);
- (5) Nitrogen Dioxide (NO<sub>2</sub>);
- (6) Sulfur Dioxide (SO<sub>2</sub>);
- (7) Lead;
- (8) Visibility Reducing Particles;
- (9) Sulfates;
- (10) Hydrogen Sulfide (H<sub>2</sub>S); and
- (11) Vinyl Chloride.

(b) The Pala AAQS for each pollutant shall be equivalent to the most stringent of the following:

- (1) The latest Pala Ambient Air Quality Standard for that pollutant, as adopted by PBMI Regulations;
- (2) The latest National Ambient Air Quality Standard (NAAQS), as adopted by the Code of Federal Regulations; or
- (3) If adopted in regulations by the Executive Committee in its discretion and upon the advice of the Administrator, the latest California Ambient Air Quality Standards (CAAQS) for the pollutant, as adopted by the California Code of Regulations.

(c) The Administrator shall make the latest Pala AAQS available to any person subject to the Pala Air Quality Ordinance, upon request by that person.

### 4202. Designations

(a) For each pollutant listed under the Pala AAQS under § 4201(a), the Administrator shall designate the Pala Air Basin as:

- (1) Nonattainment, if the Pala Air Basin does not meet the Pala AAQS for that pollutant;
- (2) Attainment, if the Pala Air Basin meets the Pala AAQS for that pollutant; or
- (3) Unclassifiable, if the Pala Air Basin cannot be classified on the basis of available information as meeting or not meeting the Pala AAQS for the pollutant.

(b) The Pala Air Basin designation established pursuant to paragraph (a) for each pollutant listed in the Pala AAQS shall be equivalent to the most stringent of the following:

- (1) The latest Pala Air Basin designation adopted in Pala Regulations for the pollutant;
- (2) The latest federal designation of the federally-recognized air basin surrounding the Reservation for the pollutant; or

- (3) The latest California designation of the San Diego County Air Basin for the pollutant.
- (c) The Administrator shall make the latest Pala Air Basin designations available to any person subject to the Pala Air Quality Ordinance, upon request by that person.

## ARTICLE 3. FUGITIVE DUST

### 4301. Purpose

The purpose of this Article is to reduce the amount of particulate matter in the ambient air present as a result of man-made fugitive dust sources by requiring actions to prevent, reduce, or mitigate fugitive dust emissions.

### 4302. Definitions

For the purposes of this Article the following words and phrases shall have the following meanings:

(a) ACTIVE OPERATIONS shall mean any activity capable of generating fugitive dust, including but not limited to earth-moving activities, construction/demolition activities, disturbed surface area, or heavy- and light-duty vehicular movement.

(b) BULK MATERIAL is sand, gravel, soil, aggregate material less than two inches in length or diameter, and other organic or inorganic particles.

(c) CONSTRUCTION/DEMOLITION ACTIVITIES are any on-site mechanical activities preparatory to or related to the building, alteration, rehabilitation, demolition or improvement of property, including but not limited to the following activities: grading, excavation, loading, crushing, cutting, planting, shaping, or ground breaking.

(d) DISTURBED SURFACE AREA means a portion of the earth's surface which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition, thereby increasing the potential for emission of fugitive dust. This definition excludes those areas which have:

- (1) Been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions;
- (2) Been paved or otherwise covered by a permanent structure; or
- (3) Sustained a vegetative ground cover over at least 70 percent of the native cover for a particular area for at least 30 days.

(e) EARTH-MOVING ACTIVITIES means the use of any equipment for any activity where soil is being moved or uncovered, and shall include, but is not limited to, grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, landfill operations, weed abatement through disking, or soil mulching.

(f) EMERGENCY means any sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate the loss of, or damage to, life, health, property, or essential public services.

(g) FUGITIVE DUST means any solid particulate matter that becomes airborne, other than that emitted from an exhaust stack, directly or indirectly as a result of human activities.

(h) OPEN STORAGE PILE is any accumulation of bulk material that is not fully enclosed, covered, or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more square feet.

(i) ON-SITE means within the property lines, or as otherwise approved or determined by the Administrator.

(j) PAVED ROAD means an improved street, highway, alley, public way, or easement that is covered by typical roadway materials excluding access roadways that connect a facility with a public paved roadway and are not open to through traffic. A public paved road is a paved road that is open to public access and is owned by any governmental or quasi-governmental agency. A private paved road is any paved road that is not defined as public.

(k) PROPERTY LINE means the boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property. Where such property is divided into one or more sub-tenancies, the property line(s) shall refer to the boundaries dividing the areas of all sub-tenancies.

(l) SOLID PARTICULATE MATTER means particulate matter that exists as a solid at standard conditions.

(m) TRACK OUT means any bulk material that adheres to and agglomerates on the exterior surface of motor vehicles, haul trucks, and equipment (including tires) that have been released onto a paved road, creating visible roadway dust.

(n) UNPAVED ROAD means an unsealed or unpaved road, equipment path, or travel way that is not covered by one of the following: concrete, asphaltic concrete, recycled asphalt, asphalt, or other materials with equivalent performance as determined by the Administrator or the U.S. EPA. A public unpaved road is any unpaved roadway owned by any governmental or quasi-governmental agencies. A private unpaved road is any unpaved roadway not defined as public.

(o) VISIBLE DUST EMISSIONS means any solid particulate matter that is visually detectable in the air without the aid of instruments other than corrective lenses.

(p) VISIBLE ROADWAY DUST means any sand, soil, dirt, or other solid particulate matter which is visible upon paved road surfaces and which can be removed by a vacuum sweeper or a broom sweeper under normal operating conditions.

#### **4303. Applicability**

This Article applies to any activity or man-made condition capable of generating fugitive dust.

#### **4304. Requirements**

(a) No person shall cause or allow fugitive dust emissions from any active operation, open storage pile, or disturbed surface area such that dust remains visible in the atmosphere beyond the property line of the emission source for more than a total of 3 minutes in any 60 minute period.

(b) No person shall cause or allow track-out to extend 25 feet or more in cumulative length from any ingress or egress point from an active operation. Notwithstanding the preceding, all track-out from an active operation shall be removed at the conclusion of each workday or evening shift.

(c) A person transporting bulk material or other material capable of producing fugitive dust emissions shall load, secure, and transport the materials in a manner so that no visible dust emissions are released from the transport vehicle at any time.

#### **4305. Exemptions**

(a) The provisions of this Article shall not apply to:

- (1) Activities and man-made conditions where the owner or operator complies with a fugitive dust control plan, prepared in consultation with the Administrator and approved by the Administrator;
- (2) Emergency operations conducted during and in response to life-threatening situations, or in conjunction with any officially declared disaster or state of emergency;
- (3) Active operations conducted by essential service utilities to provide electricity, natural gas, telephone, water and/or sewer during periods of unplanned service outages and emergency disruptions; or
- (4) Permanent unpaved roads.

(b) Fugitive dust control plans may be developed by the owner or operator of a dust source in order to comply with this Article. Fugitive dust control plans must be prepared in consultation with the Administrator, be approved by the Administrator, and allow for the Administrator to access and inspect the dust source site to ensure compliance with the plan.

- (1) A fugitive dust control plan must identify the potential sources of dust, assign individual responsibilities of the owner or operator in managing dust, and require dust control measures that may include but are not limited to: watering to settle material at rest and during loading and unloading of materials, wind breaks, tarping, low speed limits for vehicles on the site, street sweeping, and height limits for storage piles.
- (2) Regulations may be adopted that impose additional requirements on the content of fugitive dust control plans and on fugitive dust control plan implementation.



## **ARTICLE 4. OPEN BURNING**

### **4401. Purpose**

The burning of wastes and other materials can cause severe health problems, pollute the air, soil, and water, and pose a fire danger to the surrounding area. The purpose of this Article is to control and monitor the setting of fires, open burning, and related air emissions within the exterior boundaries of the Pala Reservation in order to protect public health, safety, welfare, and the environment.

### **4402. Administrator**

The Administrator of this Article is the Pala Fire Department as directed by the Pala Fire Department Chief, except that the Pala Environmental Department shall act in a consultative role, open burn permit applications shall be forwarded to the Pala Environmental Department for review, and the Pala Environmental Department shall announce and help implement any burn bans under this Article.

### **4403. Definitions**

(a) **AGRICULTURAL BURNING** means open burning of vegetative materials produced wholly from the growing and harvesting of crops in agricultural operations, including the burning of grass and weeds in fence rows, ditch banks, and berms in non-tillage orchard operations, fields being prepared for cultivation, agricultural wastes, and the operation or maintenance of a system for the delivery of water for agricultural operations. Agricultural Burning also includes burns of grasses for basket-weaving.

(b) **BURN BAN** means a period of time during which open burning is prohibited by the Administrator.

(c) **BURN PERMIT** means a written approval by the Administrator for open burning on land within the jurisdiction of the Pala Band of Mission Indians, in accordance with the provisions of this Article.

(d) **FIRE HAZARD** means a hazardous condition involving combustible, flammable, or explosive material that represents a substantial threat to life or property if not immediately abated, as determined by the Administrator or the Pala Fire Department.

(e) **FIRE PREVENTION/SUPPRESSION TRAINING** means the instruction of employees or other persons in the methods of suppressing fires.

(f) **FIRE PROTECTION AGENCY** means the Pala Fire Department and any other public agency granted the authority to conduct specified fire protection services within the Pala Reservation.

(g) OPEN BURNING means the burning of a material that results in the products of combustion being emitted directly into the atmosphere without passing through a stack. Open burning includes burning in burn barrels.

(h) OUTDOOR RESIDENTIAL COOKING means cooking food within a self-contained and coverable appliance designed for outdoor cooking (e.g., a barbecue grill), outside at a residential property.

(i) PRESCRIBED BURNING means planned open burning conducted by an Administrator approved fire protection agency on identified lands selected in advance for one or more of the following purposes:

- (1) Removal of vegetation from land predominantly covered with chaparral, trees, grass, or standing brush;
- (2) Removal of forest vegetation or debris for the purpose of forest protection;
- (3) Removal of brush, weeds, invasive plants, or other plant matter to promote a healthier environment for plant or animal species or to re-establish native plant species;
- (4) Disease and pest prevention; and/or
- (5) Fire prevention/suppression training consuming greater than 1 acre.

(j) VEGETATIVE WASTE shall have the same meaning as defined in paragraph 6104(rr).

#### **4404. Applicability**

This Article applies to any person conducting, allowing, or proposing any open burning within the exterior boundaries of the Pala Reservation.

#### **4405. Requirements**

- (a) All open burning is prohibited, except open burning allowed under § 4406 or § 4407.
- (b) No person shall commence or continue an allowable open burn within the Reservation unless the open burn is conducted in a manner that minimizes the risks to human health and safety.
- (c) During a burn ban issued by the Administrator, open burning under § 4406 and § 4407 is prohibited, except where allowed under § 4408(c).
- (d) No person shall burn or allow the burning of:
  - (1) Garbage;
  - (2) Hospital waste;
  - (3) Dead animals or parts of dead animals, excluding burning for purposes of cooking;
  - (4) Junked motor vehicles or any materials resulting from a salvage operation;
  - (5) Tires or rubber materials or products;
  - (6) Plastics, plastic products, or Styrofoam;
  - (7) Asphalt or composition roofing, or any other asphaltic material or product;
  - (8) Tar, tarpaper, petroleum products, or paints;
  - (9) Paper, paper products, or cardboard other than what is necessary to start a fire;

- (10) Lumber or timbers treated with chemicals or preservatives;
- (11) Construction debris or demolition waste;
- (12) Pesticides, herbicides, fertilizers, or other chemicals;
- (13) Insulated wire;
- (14) Batteries;
- (15) Light bulbs;
- (16) Materials containing mercury (e.g., thermometers);
- (17) Asbestos or asbestos-containing materials;
- (18) Pathogenic wastes;
- (19) Hazardous wastes;
- (20) Recyclable materials;
- (21) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned;
- (22) Any additional items added to this list by regulation.

(e) A training fire containing prohibited materials may be permitted by the Administrator pursuant to subparagraph 4407(a)(4), provided that such burn complies with all other provisions of this Article, other applicable provisions of PBMI law, and applicable provisions of federal law.

(f) No person shall commence or continue an open burn within the Pala Reservation that endangers public health or welfare or that constitutes a nuisance.

(g) Except for ceremonial and outdoor residential cooking purposes where adequate fire safety precautions are taken including notification to the Fire Department, an open burn shall not be commenced if wind speeds are greater than 7 miles per hour and shall be extinguished:

- (1) If wind speeds are greater than 10 miles per hour; or
- (2) When wind conditions are such that sparks or embers from the fire may be spread outside an area in which the fire can be safely contained.

#### **4406. Permissible Open Burning – No Permit Required**

(a) Subject to the provisions of this Article, including burn ban restrictions under § 4408, a person may conduct or allow an open burn without a burn permit for the following:

- (1) Recreational fires;
- (2) Outdoor cooking fires; or
- (3) Ceremonial purposes, where prior notification of the ceremonial burning has been provided to the Fire Department.

(4)

(b) An authorized fire protection agency may conduct an emergency wildland suppression burn without a burn permit for the purpose of saving life or property.

#### **4407. Permissible Open Burning – Permit Required**

(a) The Administrator may issue a written burn permit for the following:

- (1) Disposal of vegetative waste, including disposal of vegetation or vegetative waste infected with disease or pests that may spread to other vegetation;
- (2) Agricultural burning;
- (3) Prescribed burning, including abatement of a fire hazard that a fire protection agency determines cannot be abated by an economically, ecologically, and logistically viable option;
- (4) Fire prevention/suppression training; and
- (5) The use of pyrotechnics for creation of special effects during filming of motion pictures, videotaping of television programs, or other commercial filming or video production activities.

(b) Subject to the provisions of this Article, persons or organizations authorized by the Pala Band of Mission Indians may conduct or allow fireworks displays, subject to the following requirements:

- (1) A permit for the fireworks display has been issued by the California Office of the State Fire Marshall;
- (2) Permissible fireworks are used;
- (3) The use of fireworks is limited to paved or barren areas; and
- (4) A readily accessible source of adequate water to extinguish fires remains present.

(c) It shall be unlawful for any person to conduct or allow open burning, pursuant to the authority of a burn permit, unless all of the following requirements are met:

- (1) An open burn permit has been issued in writing by the Administrator and was obtained pursuant to the requirements of this Article;
- (2) Notification has been obtained from the Administrator that a burn ban has not been declared and that open burning is allowable for the period in which it is conducted; and
- (3) The open burning is conducted in a manner that is consistent with the requirements of the written open burn permit and the provisions of this Article.

(d) A person required to obtain a burn permit pursuant to this Article shall file a burn permit application in a manner and form prescribed by the Administrator.

(e) In reviewing an application and determining whether to approve or deny a burn permit, the Administrator shall at minimum consider:

- (1) The nature, size, duration, and location of the proposed burn;
- (2) The anticipated effects of the proposed burn;
- (3) Current and projected air quality conditions; and
- (4) The anticipated cumulative effects of the proposed burn and other scheduled burns in the area.

(f) The Administrator shall only issue a burn permit if the Administrator determines that the proposed burn will not cause an adverse impact on air quality or otherwise endanger public health or welfare.

(g) A person whose application for a burn permit is denied by the Administrator may appeal the denial in accordance with § 12001.

**4408. Burn Bans**

- (a) The Administrator may declare a burn ban:
  - (1) During periods of impaired air quality or high fire danger; or
  - (2) Based on predictions of impaired air quality or high fire danger.
  
- (b) The Administrator shall declare a burn ban based on impaired air quality when one or more of the following pollutant concentrations is measured or predicted within the Reservation to:
  - (1) Exceed 75% of the currently effective Pala Ambient Air Quality Standards for PM<sub>2.5</sub> or PM<sub>10</sub>; or
  - (2) Exceed any other of the currently effective Pala Ambient Air Quality Standards.
- (c) No person shall commence or continue an open burn within the Reservation during a burn ban, except:
  - (1) An open burn for cooking, recreational, or ceremonial purposes may be commenced or continued during a burn ban provided such burn is less than four feet in diameter, less than three feet in height, and contained within a fire ring, barbecue grill, or similar structure, unless the Administrator has issued notice pursuant to paragraph (d) of this Section that such an open burn is prohibited; or
  - (2) An open burn commenced prior to the declaration of a burn ban may be continued during a burn ban if the Administrator determines that immediate cessation of the open burn would likely cause greater emissions than allowing the open burn to continue and specifically authorizes in writing that the open burn may continue.
  
- (d) The Administrator may prohibit all open burning, including fires for cooking, recreational, and ceremonial purposes, based on the severity of air quality conditions or fire danger.

**4409. Fees**

Any person submitting an application for a burn permit pursuant to § 4407 may be assessed applicable filing and evaluation fees. Regulations may be adopted that establish fees for the filing and evaluation of burn permit applications.

## **ARTICLE 5. NOXIOUS ODORS**

### **4501. Purpose**

The purpose of this Article is to protect public health, safety, comfort, and wellbeing by regulating activities within the Pala Reservation that produce or may produce noxious odors.

### **4502. Definitions**

For the purposes of this Article, “noxious odor” shall mean an odor that is detectable by an ordinary person’s sense of smell beyond the property line of the odor source, that would not be present in the outdoor ambient air in the absence of these odor emission source(s), and that unreasonably interferes with the use or enjoyment of public or private property, or has a quantifiable and detrimental impact on human health based on accepted human health standards and exposure limits as determined by the Administrator.

### **4503. Applicability**

This Article applies to any activity conducted within the Pala Reservation that generates or has the potential to generate a noxious odor. It does not apply to the Pala Wastewater Treatment Facility or to the Transfer Station.

### **4504. Requirements**

A person shall not cause or allow the release of a noxious odor.

### **4505. Abatement**

(a) In determining whether a violation under this Article has occurred, the Administrator shall consider the following factors:

- (1) The number, frequency, distribution, and reasonableness of any complaints made to the Administrator by residents and business owners or operators regarding the noxious odor;
- (2) Information on the character, frequency, and duration of the odor;
- (3) Information on the threat to and/or impact on human health; and
- (4) Any other information or data that the Administrator deems relevant.

(b) If the Administrator determines that a noxious odor source in violation of § 4504 is being maintained or exists on the premises, the Administrator shall notify in writing the owner of record and occupant of the premises and order that the noxious odor be abated. The notice of violation shall specify the steps to be taken to abate the noxious odor and the time within which the noxious odor is to be abated. If the notice of violation is not complied with within the time specified, the Administrator may take any enforcement actions authorized under Chapter 11 of this Ordinance.

(c) The Administrator shall enforce the provisions of this Article on behalf of any person affected by a noxious odor within the exterior boundaries of the Pala Reservation that meets all of the following criteria:

- (1) The affected person has a real property interest in land within the exterior boundaries of the Pala Reservation, including but not limited to:
  - (A) A property owner;
  - (B) A landlord or lessor;
  - (C) A tenant or lessee;
  - (D) An allottee; or
  - (E) The PBMI.
- (2) The affected person is seeking enforcement by the Administrator for noxious odors that affect or affected them while present on the property within the exterior boundaries of the Pala Reservation in which they have a real property interest; and
- (3) The Administrator has determined that, according to the provisions of this Article, a violation of this Article has occurred.

## **ARTICLE 6. INCORPORATION OF FEDERAL REGULATIONS BY REFERENCE**

### **4601. Purpose**

The purpose of incorporating the specified federal regulations under this Article is to enable the Pala Band of Mission Indians to:

(1) Independently and under tribal law, administer and exercise authority over persons and activities subject to the incorporated federal regulations, in a manner that does not preclude the U.S. Environmental Protection Agency's administration, enforcement, and other authorities under the same federal regulations;

(2) Provide PBMI with the authority to inspect permit holder activities and records to ensure violations are corrected;

(3) Ensure that persons and activities governed by the Pala Air Quality Ordinance comply with the PBMI standards, criteria, and requirements adopted pursuant to this Ordinance, particularly where these are stricter than applicable federal standards, criteria, and requirements.

### **4602. Applicability**

This Article applies to any person subject to PBMI jurisdiction under the Pala Environmental Ordinance and that is conducting or intends to conduct an activity that is subject to U.S. EPA regulations promulgated under the federal Clean Air Act.

### **4603. Minor New Source Review**

(a) The regulations included in Title 40 of the Code of Federal Regulations, Parts 49.151 through 49.165 – Federal Minor New Source Review Program in Indian Country (Tribal Minor NSR), are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Tribal Minor NSR Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority, in accordance with the Tribal Minor NSR Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Tribal Minor NSR Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

### **4604. Major New Source Review / Prevention of Significant Deterioration**

(a) The regulations included in 40 C.F.R., Part 52.21 – Prevention of Significant Deterioration of Air Quality (Major New Source Review or "Major NSR") are hereby incorporated by reference



into the Pala Environmental Ordinance. Any changes or additions to the Major NSR Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Major NSR Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Major NSR Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

#### **4605. Major New Source Review for Nonattainment Areas**

(a) The regulations included in 40 C.F.R., Part 51, Appendix S – Emission Offset Interpretative Ruling (Major Nonattainment New Source Review or “Major NA NSR”) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Major NA NSR Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Major NA NSR Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Major NA NSR Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

#### **4606. Standards of Performance for New Stationary Sources**

(a) The regulations included in 40 C.F.R., Part 60 – Standards of Performance for New Stationary Sources (NSPS) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the NSPS after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the NSPS Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the NSPS Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

**4607. Standards for Hazardous Air Pollutants**

(a) The regulations included in 40 C.F.R., Part 61 – National Emissions Standards for Hazardous Air Pollutants (NESHAP) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the NESHAP Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the NESHAP Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the NESHAP Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

**4608. Title V Operating Permit Program**

(a) The regulations included in 40 C.F.R., Part 71 – Federal Operating Permit Programs (Title V Permit) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Title V Permit Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Title V Permit Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Title V Permit Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

## CHAPTER 5. WATER RESOURCES

### ARTICLE 1. GENERAL PROVISIONS

#### 5101. Title

This Chapter shall be known and cited as the “Pala Water Resources Ordinance.”

#### 5102. Findings and Declarations

(a) Impacts to water resources within the Pala Reservation directly affect fundamental interests of the Pala Band of Mission Indians, including the political integrity, economic security, health, safety, and welfare of the Tribe.

(b) The PBMI possesses inherent sovereign authority to regulate persons and activities that affect water resources, including activities conducted by non-members on privately owned land within the exterior boundaries of the Pala Reservation.

(c) It is a primary interest of the PBMI to establish and maintain comprehensive laws, policies, programs, and procedures to protect, preserve, and enhance the quality and quantity of water resources within the Pala Reservation on behalf of the PBMI community.

#### 5103. Purpose

The purpose of the Pala Water Resources Ordinance is to protect, preserve, enhance, and manage the quality and quantity of water resources within the exterior boundaries of the Pala Reservation.

#### 5104. Definitions

For the purposes of this Chapter the following words and phrases shall have the following meanings:

(a) CLEAN WATER ACT (CWA) means the Federal Water Pollution Control Act enacted by the United States Congress and codified at 33 U.S.C. § 1251 *et seq.*

(b) CONTAMINANT means any physical, chemical, biological, or radiological substance or matter in water that has the potential to adversely affect human health or the environment.

(c) DESIGNATED USE means the use or uses specified in water quality standards for each waterbody or distinct waterbody segment, whether or not they are being attained.

(d) DISCHARGE means the release, by controlled means (as through a pipe or culvert) or uncontrolled means (such as by precipitation runoff from a paved process area) of any liquid or slurry, to any point or area. It includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(e) GROUNDWATER means any water beneath the surface of the ground within the exterior boundaries of the Pala Reservation.

(f) NONPOINT SOURCE means any source of water pollution that does not meet the legal definition of “point source”.

(g) POINT SOURCE means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(h) POLLUTANT means a substance or matter that:

- (1) Will alter the quality of the waters of the Reservation;
- (2) Is defined as a “pollutant” under 40 C.F.R. Part 122.2; or
- (3) Can be defined as a “contaminant” under paragraph (b).

(i) SAFE DRINKING WATER ACT (SDWA) means the Safe Drinking Water Act enacted by the United States Congress and codified at 42 U.S.C. § 300f *et seq.*

(j) STORMWATER means rainwater, rainwater runoff, snow melt runoff, surface runoff, and water drainage.

(k) STORMWATER SYSTEM means any system or part of a system that collects, conveys, treats, stores, or discharges stormwater.

(l) SURFACE WATER means any water which is open to the atmosphere and subject to surface runoff.

(m) SWRCB means the State Water Resources Control Board of California.

(n) WASTEWATER SYSTEM means any individual or community wastewater system, including any devices, systems, or parts of a system used in the storage, conveyance, treatment, discharge, disposal, recycling, or reclamation of wastewater. This definition includes, but is not limited to wastewater treatment facilities, septic tanks, drain fields, service lines, sewers, and interceptor lines.

(o) WATERS OF THE TRIBE means any surface water or groundwater located within the exterior boundaries of the Pala Reservation.

(p) WATER QUALITY CRITERIA means elements of Pala water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports a particular use. When criteria are met, water quality will generally protect the designated use.

(q) WATER QUALITY STANDARDS consist of a designated use or uses for the waters of the Pala Reservation and water quality criteria for such waters based upon such uses. Water quality standards are established to protect the public health or welfare, enhance the quality of water, and serve the purposes of this Chapter.

(r) WELL means a shaft sunk into the ground to extract water, gas, or oil, including but not limited to any domestic, municipal, industrial, agricultural, dry, drainage, monitoring, or abandoned well.

(s) WETLANDS means areas that are inundated or saturated by surface 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.

**5105. Applicability**

This Ordinance applies to all persons and activities that affect or may affect water resources within the exterior boundaries of the Pala Indian Reservation.

**5106. Supersession**

This supersedes and replaces the Pala Band of Mission Indians' Ordinance Number 15, "Prohibited Pollutants in the San Luis Rey River" (July 14, 1995), as amended.

## **ARTICLE 2. WATER QUALITY**

### **5201. Purpose**

The purpose of this Article is to reduce, prevent, and control emissions of pollutants into the waters of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

### **5202. Definitions**

For the purposes of this Article the following words and phrases shall have the following meanings:

(a) NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) means the U.S. EPA program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under 40 C.F.R. Part 122.

(b) DREDGE AND FILL PERMIT means a permit that allows a dredge and/or fill activity to occur within a wetland that is located within the Pala Reservation.

### **5203. Applicability**

This Article applies to all persons and activities that affect or may affect the quality of any surface water or groundwater within the exterior boundaries of the Pala Reservation.

### **5204. Water Quality Standards**

(a) Pala Water Quality Standards (WQS) may be adopted by regulation for the surface and ground waters within the Pala Reservation. Pala WQS shall be at least as stringent as the latest Water Quality Standards adopted by the State of California under the Clean Water Act.

(b) In the absence of the Pala WQS adopted by regulation, the Pala WQS for each waterbody within the Pala Reservation shall be equivalent to the most stringent of the following:

- (1) The latest applicable Water Quality Standards adopted by the U.S. EPA in accordance with the Code of Federal Regulations; or
- (2) If adopted in regulations by the Executive Committee in its discretion and upon the advice of the Administrator, the latest Water Quality Standards adopted pursuant to the California Code of Regulations by the California State Water Resources Control Board for the closest, connected waterbody within the jurisdiction of the State of California.

(c) The Administrator shall make a copy of, or reference(s) to, the latest Pala WQS available to any person subject to the Pala Water Resources Ordinance, upon request by that person.

### **5205. Discharge of Pollutants**

(a) No person shall discharge or allow to be discharged a pollutant into any surface water, groundwater, or stormwater system within the Reservation before completing an Environmental Review under § 3007 and, if required, obtaining applicable permits that authorize the discharge. This paragraph applies to both point source and nonpoint source discharges of pollutants.

(b) No person shall discharge any pollutant onto or into any land within the Reservation, where the discharge has the potential to contaminate soils, surface water, or groundwater before completing an Environmental Review under § 3007 and, if required, obtaining applicable permits that authorize the discharge. This paragraph applies to both point source and nonpoint source discharges of pollutants.

(c) No person shall conduct or allow an activity subject to 40 C.F.R. Part 122 that will result in a discharge of a pollutant from a point source into waters of the Reservation, such as the discharge from a wastewater system, without first obtaining coverage under a National Pollution Discharge Elimination Permit issued by the U.S. EPA in accordance with § 5206 and applicable federal laws.

(d) No person shall conduct or allow any construction activity subject to 40 C.F.R. Part 122, such as grading, clearing, or excavating, that will result in a total land disturbance of more than one acre, without first obtaining coverage under a permit issued by the U.S. EPA in accordance with § 5206 and applicable federal laws.

(e) Regulations may be adopted that require a person to obtain a permit and/or meet other requirements before conducting or allowing an activity that may result in the discharge of a pollutant into any surface water, groundwater, or stormwater system within the Reservation. These activities include, but are not limited to:

- (1) Any point source pollutant discharges;
- (2) Any nonpoint source pollutant discharges;
- (3) Construction activities that include clearing, grading, or excavating; or
- (4) Discharges from wastewater systems.

#### **5206. National Pollution Discharge Elimination System (NPDES) Permits**

(a) The regulations included in 40 C.F.R. Part 122 – EPA Administered Permit Programs: The National Pollutant Discharge Elimination System (NPDES Permit Regulations), are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the NPDES Permit Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the NPDES Permit Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the NPDES Permit Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Band according to this Ordinance.

**5207. Wetlands Modifications**

Except as allowed under this Ordinance, by an Administrator issued Environmental Permit under § 3008, and, if applicable, by the U.S. Army Corps of Engineers under Title 33 of the Code of Federal Regulations, no person shall:

- (a) Deposit or allow the placing of fill material in a wetland within the Reservation;
- (b) Dredge, remove, or permit the removal of soil or minerals from a wetland within the Reservation;
- (c) Drain surface water from a wetland;
- (d) Alter in any way the hydrology of, or drainage to, a wetland; or
- (e) Alter in any way the qualities of a wetland that create the conditions that allow the wetland to exist.

**5208. Dredge and Fill Permits**

(a) The regulations included in 33 C.F.R., Part 323 - Permits for Discharges of Dredged or Fill Material into Waters of the United States (Dredge and Fill Permit Regulations) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Dredge and Fill Permit Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Dredge and Fill Permit Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Dredge and Fill Permit Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians, the U.S. EPA, or the U.S. Army Corps of Engineers, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Band according to this Ordinance.



## **ARTICLE 3. WELLHEAD PROTECTION**

### **5301. Purpose**

The purpose of this Article is to protect groundwater resources within the Reservation by controlling potential sources of contamination within the sensitive areas surrounding wellheads.

### **5302. Definitions**

For the purposes of this Article the following words and phrases shall have the following meanings:

(a) WELLHEAD means the top of or structure built over a water well or the place where a natural spring comes out of the ground.

(b) WELLHEAD PROTECTION AREA means a protected surface and subsurface area surrounding a wellhead whose outer boundaries are defined under paragraph 5304(a).

### **5303. Applicability**

This Article applies to all persons and activities that contaminate or have the potential to contaminate groundwater within a wellhead protection area.

### **5304. Requirements**

(a) Wellhead protection areas are hereby established within the Pala Reservation. Wellhead protection areas shall, at minimum, encompass an area of 100 feet surrounding each wellhead. Larger and/or more restrictive wellhead protection areas may be established by regulation.

(b) Except as provided under paragraph (c), a person shall not conduct or allow any use or activity within a designated wellhead protection area without a wellhead protection area permit issued by the Administrator.

(c) Where all necessary permits, orders, or approvals required by the PBMI are obtained, the following uses may be allowed within a designated wellhead protection area without a wellhead protection area permit:

- (1) Conservation of soil, water, plants, and wildlife;
- (2) Outdoor recreation and nature study;
- (3) Foot, bicycle, and/or horse paths and bridges;
- (4) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing; or
- (5) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipe lines, aqueducts, and tunnels.

(d) Any person required to obtain a wellhead protection area permit pursuant to this Article shall file a wellhead protection area permit application in a manner and form prescribed by the Administrator.

**5305. Inspection**

The Administrator shall inspect all wellhead protection areas within the Pala Reservation for compliance with applicable laws and permits annually, or more frequently as necessary.

**5306. Fees**

Any person submitting a wellhead protection area permit application pursuant to § 5304 may be assessed applicable filing and evaluation fees. Regulations shall be adopted that establish fees for the filing and evaluation of wellhead protection area permit applications.

## **CHAPTER 6. SOLID AND HAZARDOUS WASTE**

### **ARTICLE 1. GENERAL**

#### **6101. Title**

This Chapter shall be known and cited as the “Pala Solid and Hazardous Waste Ordinance.”

#### **6102. Findings and Declarations**

The Pala Band of Mission Indians finds and declares the following:

(a) Generation, management, and disposal of solid and hazardous waste within the Pala Reservation directly affect fundamental interests of the Pala Band of Mission Indians, including the political integrity, economic security, health, safety, and welfare of the Tribe.

(b) The PBMI possesses inherent sovereign authority to regulate persons and activities that generate, manage, transport, store, process, and dispose of solid and hazardous waste, including activities conducted by non-members on privately owned land within the exterior boundaries of the Pala Reservation.

(c) It is a primary interest of the PBMI to establish and maintain comprehensive laws, policies, programs, and procedures to control solid and hazardous waste in order to protect public health, safety and welfare, and to preserve the environment within the Pala Reservation.

#### **6103. Purpose**

The purpose of the Pala Solid and Hazardous Waste Ordinance is to control solid and hazardous waste within the exterior boundaries of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

#### **6104. Definitions**

For the purposes of this Chapter the following words and phrases shall have the following meanings:

(a) BULKY WASTE means large items of solid waste such as household appliances, furniture, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal solid waste collection, processing, or disposal methods.

(b) CLOSURE means the termination of the receiving, handling, recycling, treatment, composting, or disposal of solid waste at a solid waste facility, and includes all operations necessary to prepare the facility for post-closure maintenance.

(c) COLLECTION means the act of collecting solid waste or hazardous waste at the place of generation by an approved collector and does not mean removal.

(d) COLLECTOR means a person or entity engaged in collection of solid waste or hazardous waste.

(e) COLLECTION SITE means a place designated by this Chapter or authorized by the Administrator where solid waste or solid waste containers may be presented for collection or removal.

(f) CONDITIONALLY EXEMPT SMALL QUANTITY GENERATOR (CESQG) means a person that generates no more than 100 kilograms of hazardous waste per calendar month.

(g) COMPOST means the product of controlled biological decomposition of organic material under aerobic conditions.

(h) COMPOSTING means the controlled biological decomposition of organic solid waste under aerobic conditions.

(i) CONSTRUCTION means construction, remodeling, repair, demolition, or deconstruction of houses, buildings, structures, roads, parking lots, or other paved or covered surfaces.

(j) CONSTRUCTION AND DEMOLITION WASTE (C&D WASTE) means the waste building materials, packaging, and rubble resulting from construction, remodeling, repair, demolition, or deconstruction activities on houses, buildings, structures, roads, parking lots, or other paved or covered surfaces.

(k) DISPOSAL means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(l) DISPOSER means a person or entity engaged in the act of solid waste or hazardous waste disposal.

(m) GENERATION means the act or process of producing solid waste or hazardous waste.

(n) GENERATOR means a person or entity engaged in the act of solid waste or hazardous waste generation.

(o) HAZARDOUS WASTE means solid waste or combination of solid wastes which, because of its quantity, concentration, or physical, chemical, or infectious characteristics:

- (1) May pose a substantial present or future hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise mismanaged; or

(2) Meets the specifications, description, or listing as a hazardous waste in 40 C.F.R. Part 261 pursuant to § 3001 of the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), as amended.

(p) HOUSEHOLD HAZARDOUS WASTE means materials that could be classified as hazardous waste under 40 C.F.R. §§ 261.20 through 261.35 but are exempt from treatment as hazardous waste under 40 C.F.R. § 261.4(b)(1) because households generate them.

(q) HOUSEHOLD SOLID WASTE means household waste that does not meet the definition of HOUSEHOLD HAZARDOUS WASTE.

(r) HOUSEHOLD WASTE means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

(s) INFECTIOUS WASTE means equipment, instruments, utensils, pathological specimens (e.g. all tissues, specimens of blood elements, excreta, and secretions obtained from patients or treated animals) and fomites (any substance that may harbor or transmit pathogenic organisms) of a disposable nature used or resulting from the medical treatment of a person or animal, or produced from an injury to a person or animal.

(t) LEACHATE means a liquid which has contacted, passed through, or emerged from solid waste or hazardous waste and includes any soluble, suspended, or miscible materials removed from the solid waste or hazardous waste.

(u) MEDICAL WASTE means:

- (1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;
- (2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy;
- (3) Waste human blood and products of blood, including serum, plasma, and other blood components;
- (4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, Pasteur pipettes, broken glass, and scalpel blades;
- (5) Contaminated animal carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals;
- (6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves;
- (7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons;

- (8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats;
- (9) Discarded medical equipment and parts that were in contact with infectious agents;
- (10) Biological waste and discarded materials contaminated with blood, excretion, exudates, or secretion from human beings or animals who are isolated to protect others from communicable diseases; or
- (11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(v) MULCH means a landscaping and gardening product that is made from vegetative waste that may be mixed with other organic waste and is spread or left on the ground to reduce evaporation, maintain even soil temperature, prevent erosion, control weeds, or enrich the soil.

(w) NON-RCRA CALIFORNIA HAZARDOUS WASTE means a solid waste that can be classified as a “non-RCRA hazardous waste” under § 66261.101 of Title 22 of the California Code of Regulations.

(x) NOXIOUS ODOR means an odor that is detectable by an ordinary person’s sense of smell beyond the property line of the odor source, that would not be present in the outdoor ambient air in the absence of these odor emission source(s), and that unreasonably interferes with the use or enjoyment of public or private property, or has a quantifiable and detrimental impact on human health based on accepted human health standards and exposure limits as determined by the Administrator.

(y) OPERATOR means the person or persons responsible for the overall operation of a waste facility or part of a waste facility.

(z) OWNER means the person or persons who own a waste facility or part of a facility.

(aa) PALA TRANSFER STATION means the solid and hazardous waste transfer station operated by the Pala Environmental Department that is located at 12802 Highway 76, Pala, CA 92059.

(bb) PALA UTILITIES DEPARTMENT means the agency within the Pala Band of Mission Indians Tribal Government that is responsible for billing for the Pala Domestic Water System, Pala Sewage Disposal System, and Pala Solid Waste Disposal Service.

(cc) PREMISES means a tract or parcel of land with or without habitable buildings or appurtenant structures.

(dd) RECYCLING means using waste as material to manufacture a new product. Recycling involves altering the physical form of an object or material and making a new object from the altered material.

(ee) RESOURCE RECOVERY means the reclamation or salvage of wastes for reuse, conversion to energy, or recycling.

(ff) REUSE means using an object or material again, either for its original purpose or for a similar purpose, without significantly altering the physical form of the object or material.

(gg) REMOVAL means the act of taking solid waste or hazardous waste from the place of generation either by an approved collection agency, the owner of the solid waste or hazardous waste, or other authorized person.

(hh) SCAVENGING means the unauthorized removal of solid waste materials from any solid waste container, solid waste collection vehicle, or approved disposal site.

(ii) SHARPS means a form of biomedical waste that can puncture or cut skin, possibly spreading blood borne pathogens or infectious disease. Examples of SHARPS include needles, syringes, lancets, auto injectors, blades, and contaminated broken glass. SHARPS can originate from healthcare settings, animal treatment, or personal use.

(jj) SOLID WASTE means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. SOLID WASTE does not include any of the following:

- (1) Hazardous waste;
- (2) Solid or dissolved materials in domestic sewage;
- (3) Solid or dissolved materials in discharges which are point sources subject to permits under 33 U.S.C. § 1342; or
- (4) Source, special nuclear, or byproduct material as defined under 42 U.S.C. § 2014.

(kk) SOURCE REDUCTION means any action which causes a net reduction in the generation of solid waste. SOURCE REDUCTION includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. SOURCE REDUCTION does not include steps taken after the material becomes solid waste or actions which would impact air, water, or other environmental resources, including but not limited to, transformation.

(ll) STORAGE means the interim containment of solid waste after generation and prior to collection for ultimate recovery or disposal.

(mm) TRANSPORT means to move a quantity of solid waste or hazardous waste from one property or premises to another.

(nn) TRANSPORTER means any person who transports solid waste or hazardous waste.

(oo) WASTE means both solid waste and hazardous waste.

(pp) UNIVERSAL WASTE means any of the following hazardous wastes that are subject to the universal waste requirements of 40 C.F.R. Part 273:

- (1) Batteries as described in 40 C.F.R. § 273.2;
- (2) Pesticides as described in 40 C.F.R. § 273.3;
- (3) Mercury-containing equipment as described in 40 C.F.R. § 273.4; and
- (4) Lamps as described in 40 C.F.R. § 273.5.

(qq) WASTEWATER SLUDGE means any solid, semi-solid, or liquid residue, excluding grit or screenings, generated or removed from wastewater during any wastewater treatment process.

(rr) VEGETATIVE WASTE means decomposable vegetative debris generated from yard or lawn care, gardening, landscaping, or land-clearing activities, including but not limited to leaves, grass trimmings, branches, bark, and limbs.

#### **6105. Applicability**

This Chapter applies to any person that generates, stores, transports, processes, disposes of, or otherwise manages solid waste or hazardous waste within the exterior boundaries of the Pala Reservation.

#### **6106. Requirements**

(a) Any person who generates, stores, transports, processes, or disposes of waste shall be responsible for the proper generation, storage, transportation, and disposal of that waste according to this Chapter. This responsibility includes, but is not limited to, liability for any costs incurred in the clean-up of waste that is improperly generated, stored, transported, processed, or disposed of, as set forth in this Chapter.

(b) No person shall generate, store, transport, process, or dispose of any waste in a manner that will harm the environment or endanger public health, safety, or welfare.

(c) The owner, agent, lessee, or occupant of any dwelling, residence, premises, or business establishment shall each be responsible for the compliance of said residence, premises, or business establishment with the provisions of this Article.

(d) No person shall dump, deposit, drop-off, or dispose of waste anywhere within the Reservation, except:

- (1) At a PBMI authorized waste facility that accepts the waste in accordance with this Chapter;
- (2) Within a waste container at an appropriate waste container site in accordance with this Chapter;
- (3) In accordance with an Administrator issued waste permit; or
- (4) As specifically allowed under this Chapter.



(e) No person shall cause or allow the accumulation of any waste upon any land or premises within the Pala Reservation, except as authorized by an Administrator issued waste permit or specifically allowed under this Chapter.

(f) No person shall dump, deposit, or dispose of waste at a waste collection site, waste facility, or in a waste container that is not intended for the use of that person.

(g) No person shall scavenge, scatter, displace, or remove waste from a waste facility, container, or other waste generation, collection, processing, transfer, or disposal site except with the permission of the Administrator.

(h) A person shall generate, store, collect, transport, process, and dispose of waste in a manner that minimizes, controls, and contains leachate.

(i) When waste is dumped, deposited, or disposed of in violation of this Chapter and three or more items in the waste identify the same person as the owner or recipient of the waste, there shall be a rebuttable presumption that this person is responsible for the unlawful dumping of the waste. If, in addition, three or more other items in the waste also identify another person or persons as the owner or recipient of the waste, then there shall be a rebuttable presumption that each person so identified is jointly and severally liable for violating this Ordinance.

(j) All solid waste acceptable for collection, transport, deposit, drop-off, or disposal shall be separated from hazardous waste and other unacceptable waste prior to the collection, transport, deposit, drop-off, or disposal of the solid waste respectively.

(k) All hazardous waste acceptable for collection, transport, deposit, drop-off, or disposal shall be separated from unacceptable waste prior to the collection, transport, deposit, drop-off, or disposal of the hazardous waste respectively.

(l) Waste collected by an authorized or permitted waste services provider in accordance with this Chapter shall become the property of the authorized collector at the time the collector takes possession of the waste.

(m) Waste received and accepted at an authorized or permitted waste facility in accordance with this Chapter shall become the property of the waste facility at the time the facility takes possession of the waste.

(n) No person shall conduct open burning of any waste, except as authorized under § 4406 or § 4407 of the Open Burning Article.

## **ARTICLE 2. SOLID WASTE**

### **6201. Purpose**

The purpose of this Article is to control solid waste within the exterior boundaries of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

### **6202. Applicability**

This Article applies to any person that generates, stores, transports, processes, disposes of, or otherwise manages solid waste within the exterior boundaries of the Pala Reservation.

### **6203. Storage**

(a) No person shall store solid waste without an Administrator issued solid waste permit, except:

- (1) The Pala Environmental Department;
- (2) Pala Tribal Services;
- (3) Any Pala wastewater treatment facility; or
- (4) As allowed under paragraph (b).

(b) A person may temporarily store solid waste at the building or premises at which it is generated for a reasonable period of time, as determined by the Administrator, prior to collection, transportation, and disposal. This time period shall not exceed thirty (30) days, unless authorized in writing by the Administrator.

(c) The owner, agent, lessee, and occupant of a dwelling, residence, premises, or business establishment shall be responsible for proper storage of all solid waste accumulated at the building or premises until the solid waste is removed.

(d) All solid waste shall be stored in a sanitary manner that does not:

- (1) Allow it to spill, leak, or be scattered by the wind;
- (2) Attract rodents, flies, mosquitoes, animals, or other pests;
- (3) Constitute a safety or public health hazard; or
- (4) Pose a threat to the environment.

(e) Solid waste placed outside of a completely enclosed building or structure shall be stored:

- (1) In a container that is durable, rust resistant, non-absorbent, water tight, rodent proof, insect proof, and easily cleanable with a close fitting, tight cover;
- (2) In a container approved and accepted by a PBMI authorized solid waste collector; or
- (3) In a container or manner authorized by the Administrator or allowed under this Chapter.

(f) Except for temporary storage of solid waste under paragraph (b), a person or entity that stores solid waste shall possess and maintain:

- (1) An emergency response plan that meets requirements prescribed by the Administrator; and

- (2) Sufficient insurance and liability coverage, the minimum limits of which shall be determined by the Administrator.

**6204. Collection and Transportation**

(a) No person shall conduct a solid waste collection or transportation operation within the Reservation without an Administrator issued solid waste permit, except:

- (1) A person collecting, transporting, and disposing of household solid waste from a property owned or occupied by that person;
- (2) A person collecting, transporting, and disposing of household solid waste if such activity is not in furtherance of a commercial or government enterprise;
- (3) A person collecting, transporting, and disposing of household solid waste if collected, transported, and disposed of from a single residence or business;
- (4) A person holding a valid business license to engage in a nursery, gardening, or landscaping business that is collecting, transporting, and disposing of vegetative waste from a property they are authorized to work at;
- (5) A contractor collecting, transporting, and disposing of C&D and other waste from a construction site they are authorized to work at;
- (6) A waste services provider licensed or authorized to collect, transport, and dispose of solid waste within California;
- (7) EDCO Disposal;
- (8) The Pala Tribal Services; or
- (9) The Pala Environmental Department.

(b) A person transporting solid waste shall load, secure, and transport the solid waste in a manner so that no waste is blown, dropped, leaked, or spilled from the transport vehicle at any time. If solid waste is blown, dropped, leaked, or spilled from a transport vehicle the transporter shall immediately:

- (1) Collect the solid waste;
- (2) Return and secure the solid waste within the vehicle; and
- (3) Clean and decontaminate the area.

(c) The receipt, acceptance, collection, or transportation of hazardous waste by any solid waste collector or transporter within the Reservation is prohibited. If the collector or transporter knows or has reason to know that hazardous waste has been received, collected, or transported within the collection or transportation operation, the collector or transporter shall notify the Administrator immediately upon discovery of the hazardous waste.

(d) A solid waste collector or transporter shall implement a program to detect and prevent the receipt, acceptance, collection, or transportation of hazardous waste. This program must include at a minimum:

- (1) Random inspections of incoming loads;
- (2) Inspection of suspicious loads;
- (3) Maintenance of records of inspections;
- (4) Training of personnel to recognize hazardous waste; and
- (5) Procedures for notifying the Administrator if hazardous waste is discovered at the facility.

(e) Household solid waste not acceptable for collection by a PBMI authorized waste services provider shall be the responsibility of the generator for removal, transportation, and disposal.

(f) Commercial vehicles used for collection and transportation of solid waste shall be covered, leak-proof, durable, and of easily cleanable construction. The vehicles shall also be regularly cleaned and maintained in good repair.

(g) Except for the collection and transportation of solid waste under subparagraph (a)(1) or (a)(2), a person or entity that collects or transports solid waste shall possess and maintain:

- (1) An emergency response plan that meets requirements prescribed by the Administrator; and
- (2) Sufficient insurance and liability coverage, the minimum limits of which shall be determined by the Administrator.

## **6205. Solid Waste Facilities**

(a) No person shall construct or operate a solid waste storage, processing, recycling, recovery, or disposal facility within the Reservation without an Administrator issued solid waste permit, except the Pala Environmental Department.

(b) All solid waste facilities shall be designed, constructed, and operated in a manner that prevents the creation of a potential health hazard, threat to the environment, and mitigates to the maximum extent practicable any noxious odors.

(c) All solid waste facilities shall be designed, constructed, and operated in compliance with all applicable tribal and federal laws, including but not limited to 40 C.F.R. Parts 240 through 247, 257, and 258.

(d) The receipt, acceptance, handling, storage, processing, or disposal of hazardous waste by any solid waste facility within the Reservation is prohibited. If an operator knows or has reason to believe that hazardous waste has been received at a solid waste disposal facility, the operator shall immediately notify the Administrator upon discovery of such waste.

(e) The operator of a solid waste facility shall implement a program to detect and prevent the receipt, acceptance, handling, storage, processing, or disposal of hazardous waste. This program must include at a minimum:

- (1) Random inspections of incoming loads;
- (2) Inspection of suspicious loads;
- (3) Maintenance of inspection records;
- (4) Training of personnel to recognize hazardous waste; and
- (5) Procedures for notifying the Administrator if hazardous waste is discovered at the facility.

(f) All solid waste facilities shall possess and maintain:

- (1) An emergency response plan that meets requirements prescribed by the Administrator;
- (2) A cleanup and closure plan that meets requirements prescribed by the Administrator; and
- (3) Sufficient insurance and liability coverage, the minimum limits of which shall be determined by the Administrator.

**6206. Resource Recovery, Recycling, and Source Reduction**

- (a) It is PBMI policy that wherever possible, practical, and economically feasible:
  - (1) All solid wastes shall be reused, recycled, or recovered for conversion to energy; and
  - (2) Sources of solid waste shall be reduced or eliminated.

(b) Regulations may be adopted under this Ordinance that impose resource recovery and source reduction requirements.

**6207. Bulky Waste; Junk or Abandoned Vehicles, Buildings, Mobile Homes, and Trailers**

(a) Except as allowable under paragraph 6203(b), a person shall not store, accumulate, or allow to be stored or accumulated, any of the following on any premises within the Reservation:

- (1) Bulky waste;
- (2) Junk or abandoned vehicles; or
- (3) Junk or abandoned buildings, mobile homes, or trailers.

(b) For all solid wastes listed under paragraph (a), the owner or generator of the solid waste, or the owner or occupant of the premises where the waste is located, shall be responsible for collection, transportation, and disposal of the waste.

(c) Any building, mobile home, or trailer on the Reservation that is uninhabited for more than 120 days and is unsafe, unfit for habitation, junked, partially disassembled, wrecked, or non-operative may be declared junk or abandoned by the Administrator. A declaration by the Administrator that a building, mobile home, or trailer is junk or abandoned shall automatically include all of the contents of the building, mobile home, or trailer.

(d) Before any other enforcement action is taken pursuant to paragraph (c), the Administrator shall issue the property owner and occupant where the abandoned or uninhabited building, mobile home, or trailer is located, and the owner (if known and applicable) of the abandoned or uninhabited building, mobile home, or trailer, an order directing the repair, removal, and/or disposal of the building, mobile home, or trailer in accordance with this Ordinance and any other applicable Tribal and federal laws within a reasonable period of time, in the Administrator's discretion, that is at least 30 days but no more than 180 days.

(e) Inoperable or unregistered vehicles shall not be parked or placed on any street, alley, highway, or PBMI owned parking lot or structure within the Reservation. The Administrator or a Tribal law enforcement official shall issue and place a citation on the vehicle upon discovery of the inoperable or unregistered vehicle. If the vehicle is not removed from the street, alley, highway, lot, or structure within 72 hours after the citation was issued, the Administrator or a Tribal law enforcement official may have the vehicle towed and impounded.

(f) Any vehicle on the Reservation that is inoperable, unregistered, or in a hazardous condition for more than 30 days may be declared a junk or abandoned vehicle by the Administrator.

(g) Before any other enforcement action is taken pursuant to paragraph (f), the Administrator shall issue the property owner and occupant where the junk or abandoned vehicle is located, and the owner (if known and applicable) of the junk or abandoned vehicle, an order directing the repair, removal, and/or disposal of the vehicle in accordance with this Ordinance and any other applicable Tribal and federal laws within thirty (30) days.

(h) Junk or abandoned vehicles may be stored at a service station, auto repair business, or junk yard that possesses any necessary permits, licenses, and other approvals.

(i) An owner of a vehicle that has been declared junk or abandoned may request a temporary written waiver from the Administrator to allow the vehicle to remain on that owner's property as a restoration, historic, or classic vehicle. Where a waiver is requested for a restoration vehicle, the owner must demonstrate the vehicle is currently being restored to registerable and operable condition. All restoration, historic, or classic vehicles must be stored in a garage or securely covered. A waiver or waiver renewal issued by the Administrator under this paragraph shall not exceed a one-year period.

(j) The requirements of this Section do not apply to unregistered off-road construction or agricultural equipment that is being used in an active construction, demolition, or agricultural operation at the property where it is stored, and the equipment is not required to be registered under California Law.

(k) The Administrator may waive and release any fines, penalties, and liens imposed on junk or abandoned property under this Section if the property:

- (1) is acquired by the Tribe for disposal, removal, or repair;
- (2) is acquired by a buyer who commits to and accomplishes proper disposal, removal, or repair approved by the Administrator; or
- (3) is properly disposed of, removed, or repaired by the property owner, in consultation with and with approval from the Administrator.

**6208. Medical and Infectious Waste**

Medical and infectious waste shall be separated from other wastes at the point of origin and shall be managed as provided under the California Medical Waste Management Act, Cal. Health and Safety Code §§ 117600 – 118360.

**6209. Construction and Demolition Waste**

A person shall not cause or allow the storage or disposal of construction and demolition waste in a residential waste collection container or in any container or at any site or facility not authorized to receive C&D waste.

**6210. Asbestos**

(a) No person shall dispose of asbestos or asbestos-containing materials within the Pala Reservation.

(b) A person that discovers asbestos or asbestos-containing materials shall immediately notify the Administrator, and if construction or demolition activities are being conducted, immediately cease all activities until written approval to proceed is obtained from the Administrator.

(c) A person shall remove, store, transport, and dispose of asbestos or asbestos-containing materials in compliance with all applicable tribal and federal laws, including but not limited to:

- (1) 29 C.F.R. Parts 1910.1001 and 1926.1101;
- (2) 40 C.F.R. Part 61, Subpart M; and
- (3) 49 C.F.R. Parts 172 and 173.

#### **6211. Wastewater Sludge**

(a) The regulations included in 40 C.F.R. Part 503, Standards for the Use or Disposal of Sewage Sludge (Sludge Regulations), are hereby adopted by reference into the Pala Environmental Ordinance. Any changes or additions to the Sludge Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Sludge Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Sludge Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Band according to this Ordinance.

#### **6212. Compost and Mulch**

(a) A person may convert vegetative waste, food waste, or other organic waste into compost and/or mulch if the waste is stored, processed, and used in a manner that does not:

- (1) Produce noxious odor(s);
- (2) Allow the waste to be scattered by wind or animals;
- (3) Allow insect, rodent, or other pest infestations;
- (4) Constitute a safety or public health hazard; or
- (5) Present a threat to the environment.

(b) A person shall not convert vegetative waste, food waste, or other organic waste into compost or mulch without an Administrator issued solid waste permit unless:

- (1) Only vegetative waste, food waste, and/or other organic waste generated on the property is stored, processed, and converted into mulch or compost at the same property; and
- (2) The mulch, compost, or other byproduct resulting from the waste conversion process is not sold or exchanged for anything of value.

(c) The Pala Environmental Department shall be exempt from the requirements of paragraph (b).

**6213. Non-RCRA California Hazardous Waste**

(a) No person shall transport non-RCRA California hazardous waste across any geographical and jurisdictional boundary between the Pala Reservation and the State of California unless in compliance with all applicable California laws.

(b) No solid or hazardous waste facility within the Reservation shall receive or accept non-RCRA California hazardous waste unless:

- (1) The transporter of the non-RCRA California hazardous waste demonstrates to the waste facility operator that they are in compliance with all applicable California laws; and
- (2) The solid or hazardous waste facility is authorized to accept the non-RCRA California hazardous waste.

(c) No solid or hazardous waste facility within the Reservation shall allow a transporter to collect non-RCRA California hazardous from the facility waste unless:

- (1) The transporter demonstrates to the waste facility operator that they will transport the non-RCRA California hazardous waste in compliance with all applicable California laws; and
- (2) The solid or hazardous waste facility operator provides all documentation to the transporter that demonstrates that the non-RCRA California hazardous waste can be accepted by the transporter in compliance with all applicable California laws.

**6214. Solid Waste Permit Requirements**

(a) A person required to obtain a solid waste permit pursuant to this Article shall file a solid waste permit application in a manner and form prescribed by the Administrator.

(b) An application for a solid waste permit covering a collection and/or transportation operation, as required under § 6204, shall include the following:

- (1) An operations plan;
- (2) An emergency response plan;
- (3) Documentation of sufficient insurance and liability coverage, the minimum limits of which shall be determined by the Administrator; and/or
- (4) Any additional information required by the Administrator.

(c) An application for a solid waste permit covering a solid waste facility, as required under § 6203 or § 6205, shall include the following:

- (1) A feasibility study;
- (2) A design plan;
- (3) An operations plan;
- (4) An emergency response plan;
- (5) A cleanup and closure plan;
- (6) Documentation of sufficient insurance and liability coverage, the minimum limits of which shall be determined by the Administrator; and/or
- (7) Any additional information required by the Administrator.



(d) A person whose solid waste permit application is denied by the Administrator may appeal the decision in accordance with § 12001.

**6215. Recordkeeping and Inspections**

(a) All solid waste operations and facilities that possess or are required to possess a solid waste permit under § 6214 shall maintain records of weights and volumes of solid waste collected, transported, received, treated, stored, processed, and disposed of in a manner and form approved by the Administrator.

(b) All solid waste operations and facilities that possess or are required to possess a solid waste permit under § 6214 shall maintain a log of the following: fires, personal injury, property damage, accidents, explosions, deliveries or discharges of hazardous waste, flooding, vandalism, contamination, pollution, and other unusual occurrences.

(c) The Administrator shall review the records of and inspect all permitted solid waste operations and facilities within the Pala Reservation for compliance with applicable tribal and federal laws, at minimum, on an annual basis.

(d) The requirements of paragraphs (a) through (c) shall not apply to:

- (1) The temporary storage of solid waste under paragraph 6203(b); or
- (2) The collection and transportation of solid waste under subparagraphs 6204(a)(1) through (a)(7).

**6216. Fees**

Any person submitting a solid waste permit application pursuant to § 6214 may be assessed applicable filing and evaluation fees. Regulations may be adopted that establish fees for the filing and evaluation of solid waste permit applications.

## **ARTICLE 3. HAZARDOUS WASTE**

### **6301. Purpose**

The purpose of this Article is to control hazardous waste within the exterior boundaries of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

### **6302. Applicability**

This Article applies to any person that generates, stores, transports, processes, disposes of, or otherwise manages hazardous waste within the exterior boundaries of the Pala Reservation.

### **6303. Incorporation of Federal Hazardous Waste Regulations**

(a) The regulations included in 40 C.F.R., Parts 260 through 279 addressing the management of hazardous wastes (Federal Hazardous Waste Regulations) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Federal Hazardous Waste Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) A violation of the Federal Hazardous Waste Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

### **6304. Requirements**

(a) Any person that generates, transports, collects, stores, processes, disposes of, or otherwise manages hazardous waste within the Reservation shall comply with all applicable tribal and federal laws, including but not limited to 40 C.F.R. Parts 260 through 279.

(b) Any person that causes, allows, or has knowledge of a discharge or release of hazardous waste within the Reservation shall immediately notify the Administrator.

### **6305. Generation and Storage**

(a) No person shall generate, transport, store, or dispose of hazardous waste anywhere within the Reservation without complying with federal and tribal hazardous waste law, except:

- (1) Household hazardous waste (HHW) that is generated by a person that owns, leases, or occupies a residence and that is stored at the same residential property or premises for no longer than six (6) months;
- (2) Hazardous waste that is generated and stored by a conditionally exempt small quantity generator (CESQG) as defined by 40 C.F.R. § 261.5 and that is stored at the same property or premises where it is generated for no longer than six (6) months;
- (3) The Pala Environmental Department.

(b) Unless otherwise required by hazardous waste permit requirements or by the Administrator, hazardous waste shall be stored separately from non-hazardous waste and from other hazardous waste in which a reaction may occur, and as follows:

- (1) In a container that is durable, rust resistant, non-absorbent, water tight, leak proof, compatible with the hazardous waste, and with a close fitting, tight cover;
- (2) In a container approved and accepted by a hazardous waste collector; or
- (3) In a container or manner authorized by the Administrator in accordance with this Chapter.

**6306. Collection and Transportation**

(a) No person or entity shall collect or transport hazardous waste without a hazardous waste permit, except:

- (1) A person collecting, transporting, and disposing of universal or household hazardous waste from a property owned or occupied by that person;
- (2) A person collecting, transporting, and disposing of universal or household hazardous waste if collected, transported, and disposed of from a single residence if such activity is not in furtherance of a commercial or government enterprise;
- (3) A waste services provider collecting, transporting, and disposing of universal or household hazardous waste that is licensed or authorized to collect, transport, and dispose of universal or household hazardous waste within California;
- (4) The Pala Environmental Department; or
- (5) The Pala Utility District.

(b) A person transporting hazardous waste shall load, secure, and transport the hazardous waste in a manner so that no waste is blown, dropped, leaked, or spilled from the transport vehicle at any time. If hazardous waste is blown, dropped, leaked, or spilled from a transport vehicle the transporter shall immediately:

- (1) Collect the hazardous waste;
- (2) Return and secure the hazardous waste within the vehicle;
- (3) Clean and decontaminate the area; and
- (4) Notify the Administrator of the incident.

(c) Commercial vehicles used for collection and transportation of hazardous waste shall be covered, leak-proof, durable, and of easily cleanable construction. The vehicles shall also be regularly cleaned and maintained in good repair.

**6307. Hazardous Waste Facilities**

(a) No person shall dispose of hazardous wastes within the Pala Reservation.

(b) Any person removing, storing, transporting, and disposing of hazardous wastes shall do so in compliance with all applicable tribal and federal laws, including but not limited to all provisions of RCRA Subtitle C and its implementing regulations.

**6308. Recordkeeping and Inspections**

(a) All hazardous waste operations and facilities shall maintain records of weights and volumes of hazardous waste received, treated, stored, processed, and disposed of in a manner and form approved by the Administrator.

(b) All hazardous waste operations and facilities shall maintain a log of the following: fires, personal injury, property damage, accidents, explosions, deliveries of unacceptable hazardous waste, discharges of hazardous waste, flooding, vandalism, contamination, pollution, and other unusual occurrences.

(c) The Administrator shall review the records of and inspect all hazardous waste operations and facilities within the Pala Reservation for compliance with applicable tribal and federal laws, at minimum, on an annual basis. This paragraph shall not apply to any person or entity exempt from the requirement to obtain a hazardous waste permit under subparagraphs 6305(a)(1), 6305(a)(2), or 6306(a)(1) through (a)(3).

## **ARTICLE 4. PALA TRANSFER STATION**

### **6401. Purpose**

The purpose of this Article is to regulate the drop-off, acceptance, storage, processing, disposal, and all other forms of waste management at the Pala Transfer Station.

### **6402. Applicability**

This Article applies to any person that uses or manages the Pala Transfer Station, or otherwise enters the premises of the Pala Transfer Station.

### **6403. Operation**

(a) The Pala Transfer Station shall be operated under the authority and oversight of the Administrator, as directed by the Pala Environmental Board and Executive Committee.

(b) The Administrator shall designate Attendants with delegated authorities to operate the Pala Transfer Station on the Administrator's behalf. The Administrator shall retain the right to exercise or withdraw any of the delegated authorities at the Administrator's discretion.

### **6404. Acceptable and Unacceptable Materials**

(a) Regulations shall be adopted that list materials that are acceptable, unacceptable, or that may be accepted in limited circumstances and/or by limited users at the Transfer Station.

(b) Any materials listed as acceptable or acceptable in limited circumstances and/or by limited users at the Transfer Station under the regulations referenced in paragraph (a) may be rejected by the Transfer Station Attendant due to Transfer Station space or capacity limitations.

(c) No person shall be permitted to enter the Transfer Station with any unacceptable waste unless the unacceptable waste is completely separated from all acceptable waste, and the Transfer Station Attendant is alerted to the unacceptable waste and then permits the person to enter. The Attendant shall visually verify that the unacceptable waste was not dropped off prior to the person exiting the Transfer Station.

### **6405. User Requirements and Prohibitions**

(a) All persons using the Pala Transfer Station shall comply with the directions of the attendant and shall adhere to the following safety procedures:

- (1) All persons shall wear appropriate footwear while on site. Bare feet are absolutely prohibited;
- (2) All children (under the age of 16) shall be accompanied by an adult;
- (3) No person is allowed to enter any prohibited, restricted or closed area, or climb onto any drop off container or wall; and

- (4) Vehicles within the Facility shall be limited to a maximum speed of 10 miles per hour.
- (b) The following requirements shall apply to all users of the Pala Transfer Station:
  - (1) All waste, materials, and items shall be placed in the appropriate designated containers or areas, or as directed by the transfer station attendant;
  - (2) All posted signs, rules, and procedures shall be observed and followed;
  - (3) The instructions of the transfer station attendants shall be observed and followed;
  - (4) The owner of any vehicle unloading, dropping, or losing waste, materials, or other items at the transfer station in an area other than the appropriate designated area, whether it be by wind, unsecured load vehicle, or driver error, will be responsible for the full cleanup, removal, and/or proper placement of the waste, materials, or other items; and
  - (5) All vehicles and individuals entering the transfer station do so at their own risk and are liable for any and all damages they may cause at the transfer station.
- (c) It is prohibited for any person to salvage, remove, or to attempt to salvage or remove any material from the Pala Transfer Station without the express consent of an Attendant.
- (d) Materials shall be deposited in the container(s) and location(s) designated by signs at the facility and at the direction of an Attendant. Where the direction of an Attendant is in conflict with a sign, the Attendant's direction shall govern. Failure to place any material in the correct container or location may result in higher disposal fees, cleanup fees, and/or other penalties and remedies allowable under this Ordinance.

**6406. Use and Access**

- (a) The hours of operation for the Pala Transfer Station shall be determined by the Administrator and shall be clearly posted at the facility. The Administrator has the discretion to close the transfer station during those times when weather or other circumstances create conditions that are deemed unsafe for transfer station operations.
- (b) The Administrator or an authorized transfer station attendant shall have the right to refuse access to and the use of the Pala Transfer Station to any person, corporation, or other user that is:
  - (1) Violating or has violated this Article;
  - (2) Attempting to drop-off unacceptable waste as described in this Article; or
  - (3) Has misused the Pala Transfer Station in a manner that negatively impacts transfer station operations or created a threat to human health or the environment.
- (c) No person shall enter or be permitted within the Pala Transfer Station except during the hours when it is open to the public and when a transfer station attendant is on duty.

**6407. User Fees**

- (a) The Pala Transfer Station may charge fees for accepting waste, according to a fee schedule established by the Administrator. This fee will be based upon the volume, weight, and/or type of materials accepted, and the means in which the material is transported to the Transfer station.

(b) The fee schedule for use of the Pala Transfer Station shall be posted at the Transfer Station.

(c) Pala Tribal Members may be eligible for a reduction of or exemption from certain transfer station fees, subject to limitations and restrictions described in regulations adopted pursuant to this Article.

## CHAPTER 7. NATURAL RESOURCES PROTECTION

### ARTICLE 1. GENERAL PROVISIONS

#### **7101. Title**

This Chapter shall be known and cited as the “Pala Natural Resources Protection Ordinance.”

#### **7102. Findings and Declarations**

The Pala Band of Mission Indians finds and declares the following:

(a) The Tribe has a sacred obligation to preserve, protect, enhance, and perpetuate all natural resources for the benefit of Tribal Members and their descendants. The wise and sustainable use of natural resources traditionally has been, and remains, a matter of paramount governmental interest of the Tribe and a fundamental exercise of tribal sovereignty.

(b) Wildlife and plant life hold an important place in tribal society as both cultural and natural resources and should be granted suitable protections and respect, while allowing for sustainable management and use.

(c) To give effect to the Tribe’s values and obligations, the Pala Band of Mission Indians will regulate as necessary all activities that may impact natural resources, including hunting, fishing, trapping, and gathering.

(d) In managing the natural resources of the Tribe, special consideration shall be given to traditional tribal needs and cultural uses.

#### **7103. Purpose**

The purpose of the Natural Resources Protection Ordinance is to provide for preservation, protection, enhancement, and perpetuation of the Tribe’s natural resources while allowing for wise and sustainable use of those resources through legal protections and guidelines for proper management. The Ordinance allows for the sustainable use of living natural resources by authorizing hunting, fishing, trapping, and gathering subject to certain limitations in the Ordinance and any implementing regulations issued pursuant to this Ordinance. Additionally, this Ordinance ensures safety for persons engaging in hunting, fishing, and trapping, and for the general public.

#### **7104. Definitions**

(a) All terms in this chapter denoting actions include the attempt to take such an action.

(b) For the purposes of this Chapter the following words and phrases shall have the following meanings:



- (1) ARCHERY means hunting through the use of a bow and arrow.
- (2) BAITING means the use of a visual, auditory, or olfactory lure, including but not limited to food or a call, to lure in animals during hunting or trapping activities.
- (3) BANKFULL means the water level, or stage, at which a stream, river or lake is at the top of its banks and any further rise would result in water moving into the flood plain.
- (4) COMMERCIAL GATHERING means any gathering in which the unprocessed plant or animal product gathered, either in whole or in part, is intended to enter commerce through sale, barter, or trade.
- (5) COMMERCIAL TAKING means any taking in which the animal taken, either in whole or in part, is intended to enter commerce through sale, barter or trade.
- (6) DAILY BAG LIMIT means the total number of individual animals allowed to be taken in a day.
- (7) ENHANCEMENT means the manipulation of the physical, chemical, or biological characteristics of a natural resource to heighten, intensify, or improve a specific resource function(s). Enhancement results in the gain of selected natural resource function(s), but may also lead to a decline in other natural resource function(s).
- (8) ESTABLISHMENT means the manipulation of the physical, chemical, or biological characteristics present to develop a resource that did not previously exist at a site. Establishment results in a gain in resource area and functions.
- (9) FISHING means the taking of any form of aquatic animal life, including but not limited to fish and frogs, or any other activity which can reasonably be expected to result in the catching, taking, or harvesting of aquatic animal life.
- (10) GATHERING means the collection, harvesting, or taking of uncultivated plants or non-living animal materials, such as antlers, in whole or in part, performed for subsistence, educational, cultural, or spiritual purposes.
- (11) HABITATS are plant communities or geological features used by wildlife for some or all of their lifecycles.
- (12) HARASSING means intentionally disrupting an animal's normal behavior patterns, including but not limited to feeding, breeding, or resting.
- (13) HUNTING means the taking of animals through the use of weaponry, including but not limited to firearms, bows, and crossbows.

- (14) **IMMEDIATE DANGER** means any circumstance in which an animal is a direct and immediate threat to a person or domestic animal, such as through actively chasing, stalking, or attacking that person or animal.
- (15) **IN-KIND** means a natural resource of a similar structural and functional type to the impacted natural resource.
- (16) **IN LIEU FEE PROGRAM** means an agreement between a regulatory agency or agencies and a single sponsor which must be a public agency or non-profit organization. Under an in-lieu-fee agreement, the mitigation sponsor collects funds from permittees in lieu of the permittees providing permittee-responsible compensatory mitigation required under a regulatory program. The sponsor uses the funds pooled from multiple permittees to create one or more sites under the authority of the agreement to compensate for natural resources lost as a result of the permits issued.
- (17) **MITIGATION BANK** means an agreement between a regulatory agency or agencies and a sponsor which can be a public agency, non-profit organization, or private entity. In a banking instrument, the mitigation sponsor agrees to provide compensation that will be initiated before credits are approved for release by the regulatory agency or agencies. These credits can then be purchased or used by permittees instead of providing permittee-responsible compensatory mitigation required under the relevant regulatory program. The sponsor completes an ecologically meaningful project for which it can charge per credit.
- (18) **NATURAL RESOURCES** means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Tribe.
- (19) **OFF-SITE** means an area that is neither located on the same parcel of land as the impact site, nor on a parcel of land contiguous to the parcel containing the impact site.
- (20) **ON-SITE** means an area located on the same parcel of land as the impact site, or on a parcel of land contiguous to the impact site.
- (21) **OUT-OF-KIND** means a natural resource of a different structural and functional type from the impacted natural resource.
- (22) **POSSESSION LIMIT** means the total number of taken individual animals which may be lawfully in the possession of any person while in the field or in transit from the field.
- (23) **PRESERVATION** means the removal of a threat to, or preventing the decline of, natural resources by an action in or near those resources. This term includes activities commonly associated with the protection and maintenance of natural resources through the implementation of appropriate legal and physical mechanisms.
- (24) **PROTECTED AREA** is a general term for any of the various types of areas granted some conservation or limited use status by the Tribe.

- (25) **PROTECTED SPECIES** means those wildlife or plant species for which the Tribe, the State, or the Federal government have imposed prohibitions on take or other protections, such as through the Endangered Species Act or Migratory Bird Treaty Act.
- (26) **RIPARIAN FUNCTION** means a riparian feature important to riparian forest or aquatic system conditions, such as bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, and shade.
- (27) **RIPARIAN PROTECTION AREA** means the protected area 100 feet to each side of a waterway measured horizontally from the bankfull width.
- (28) **TAKE or TAKING** means to harass, hunt, capture, or kill an animal, which shall include damaging or destroying an animal's eggs, nest, or den.
- (29) **TRAPPING** means the use of a device such as a cage, snare, or other form of trap to take an animal.
- (30) **SPOTLIGHTING** means to stun an animal by shining a light in its eyes.
- (31) **WASTING** means to dispose of a carcass after only removing a head, limb, or other portion as a trophy.
- (32) **WILDLIFE** means undomesticated animals, including mammals, birds, fish, amphibians, and reptiles.

**7105. Applicability**

This Ordinance applies to all persons and activities that affect or may affect natural resources within the exterior boundaries of the Pala Indian Reservation.

**7106. Supersession**

(a) This supersedes and replaces the Pala Band of Mission Indians' Ordinance Number 4, "To Establish Rules Regarding Hunting and Fishing on the Pala Reservation" (February 26, 1969), as amended.

(b) If this Ordinance is found to be inconsistent with any of the provisions of the Pala Band of Mission Indians' Ordinance Number 10, "Pala Peace and Security Code" (April 21, 1983), as amended, the terms of this Ordinance shall control.

**7107. Exemptions**

The restrictions on take in this Ordinance do not apply to government officials taking wildlife or plants in their official capacity for purposes of protecting the public health, safety, and welfare or for scientific or educational purposes.

**7108. Enforcement**

(a) In addition to the enforcement powers provided in Chapter 11, violations of this Article may also be penalized through:

- (1) Temporary or permanent suspension of the right to hunt, trap, fish, and/or gather; and
- (2) Temporary or permanent revocation of any tribal permit to hunt, trap, or fish issued under implementing regulations.

(b) Tribal security or other law enforcement may seize and retain as evidence or dispose of taken wildlife if a violation has or is believed to have taken place.

## **ARTICLE 2. HUNTING AND TRAPPING**

### **7201. Purpose**

The purpose of this Article is to sustainably manage hunting and trapping within the exterior boundaries of the Pala Reservation and to ensure the preservation, protection, enhancement, and perpetuation of the wildlife resources of the Tribe.

### **7202. Applicability**

This Article applies to all persons that hunt or trap within the exterior boundaries of the Pala Indian Reservation.

### **7203. Permissible Hunting and Trapping Areas**

(a) In general, the Tribe permits hunting and trapping:

- (1) On all lands owned by or held in trust for the Tribe within the exterior boundaries of the Pala Indian Reservation;
- (2) At distances greater than 150 yards from the nearest building, playground, campsite, or other area that is frequently or currently occupied; and
- (3) Where hunting and trapping is not otherwise prohibited pursuant to this Ordinance, its implementing regulations, or other law.

(b) Regulations may be promulgated further defining or limiting this permissible hunting and trapping zone in any manner, including prohibiting hunting and trapping in certain areas and/or at certain times.

### **7204. Eligibility**

(a) The following persons are eligible to hunt and trap:

- (1) Pala enrolled Tribal members over 16 years of age;
- (2) Pala enrolled Tribal members younger than 16 years of age who are accompanied by an enrolled, adult Tribal member eligible to hunt and trap on Pala lands;
- (3) The legally recognized spouse of an enrolled member if accompanying their Tribal member spouse or Tribal member children eligible to hunt and trap on Pala lands; and
- (4) Descendants of enrolled members if accompanied by the enrolled member who is their ancestor.

(b) All persons must possess a hunting or trapping license or youth hunting or trapping license approved by the Administrator in order to hunt or trap under this Ordinance, must carry such license while hunting or trapping, and must provide the license to Tribal Security officers or other Ordinance enforcement personnel upon request. The Administrator may approve hunting and trapping licenses for use on the Pala Reservation that are issued by other jurisdictions, after considering the sufficiency of the safety and resource conservation training required by that jurisdiction's permitting process.

(c) Any legal limitation on a person's use of a firearm outside the exterior boundaries of the Pala Indian Reservation, such as limitations imposed following a felony conviction, also applies to limit that person's use of firearms for hunting within the exterior boundaries of the Pala Indian Reservation.

#### **7205. Requirements**

(a) Commercial taking of wildlife is prohibited unless the Executive Committee provides written consent to such taking and it is not otherwise prohibited by federal law.

(b) No person shall engage in wasting.

(c) Poisoning and baiting are prohibited.

(d) Lead ammunition is prohibited.

(e) It is unlawful to destroy habitat in an attempt to flush or extract game, including but not limited to damaging nesting, roosting, or denning sites.

(f) It is unlawful to transfer wildlife or introduce a species within the exterior boundaries of the Pala Reservation for the purposes of hunting and trapping, unless the Executive Committee provides consent to this action and all applicable permits and approvals are obtained.

(g) Only live cage trapping is permitted. It is unlawful to trap via leg traps, body clamping methods, deadfall traps, or snare traps. This prohibition does not apply to trapping of small nuisance animals on personal property.

(h) Spotlighting is prohibited.

#### **7206. Seasons and Other Limitations Authorized**

(a) Regulations may be promulgated that limit the manner, method, or season for hunting and/or trapping whenever the Executive Committee finds there is a conservation, public safety, or public welfare need for such regulations. This authority includes the power to prohibit hunting and trapping entirely and indefinitely for any species and in any area, and to set fines and other penalties authorized under this Ordinance for violation of the regulations.

(b) Regulations may be promulgated that establish a tribal permitting program for hunting and/or trapping, including but not limited to a tagging program, daily bag limits, or possession limits.

(c) A reasonable fee for tribal hunting and/or trapping permits or tags may be imposed by regulation.

#### **7207. Reporting**

(a) All wildlife taken shall be reported to the Administrator at the conclusion of every successful hunt or trapping in a manner that shall be established by the Administrator, which may include returning a punched tag to PED staff. The Administrator may request the age and sex of any animal taken, the location where an animal was taken, information on whether other wildlife or traces of wildlife were observed during hunting or trapping, and other relevant information.

(b) Any injury to domestic animals or other animals under private ownership during hunting or trapping must be reported to the Administrator and Tribal Law Enforcement immediately.

**7208. Safety**

(a) It is unlawful to hunt or trap while intoxicated or under the influence of any controlled substance that impairs the ability to follow safety measures.

(b) All State of California regulations on firearm use during hunting found in the California Fish and Game Code and the California Code of Regulations are incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to California hunting with firearms regulations made after the adoption of this Section shall be automatically incorporated into this Ordinance.

(c) In addition to the State of California regulations described in paragraph (b), the hunting area restrictions listed in paragraph 7203, and any regulations adopted pursuant to this Ordinance, the following restrictions on the use of firearms and other weapons while hunting shall apply:

- (1) Weapons may only be discharged between one half hour before sunrise and one half hour after sunset;
- (2) Weapons may not be aimed or discharged from a vehicle or across any paved roadway or other throughway, including hiking paths;
- (3) Weapons may not be aimed or discharged at a vehicle, aircraft, off-highway vehicle, bicycle, or unmanned vehicle;
- (4) Weapons may not be aimed or discharged at a domestic animal;
- (5) While transporting a firearm by vehicle to the hunting site, the firearm must remain unloaded;
- (6) Automatic or semi-automatic firearms, and shotguns using shells larger than a 10 gauge, are prohibited; and
- (7) Minors may only use firearms during hunting if they are accompanied by a parent or guardian, or are over 16 years of age and carry written consent of their parent or guardian.

## **ARTICLE 3. FISHING**

### **7301. Purpose**

The purpose of this Article is to sustainably manage fishing and to ensure the preservation, protection, enhancement, and perpetuation of the aquatic wildlife resources of the Tribe.

### **7302. Applicability**

This Article applies to all persons fishing within the exterior boundaries of the Pala Indian Reservation.

### **7303. Permissible Fishing Areas**

- (a) The Tribe permits fishing:
  - (1) On all waters owned by or held in trust for the Tribe within the exterior boundaries of the Pala Indian Reservation; and
  - (2) where fishing is not otherwise prohibited pursuant to this Ordinance, its implementing regulations, or other law.
  
- (b) No fishing is authorized in the Hanson Ponds unless the Executive Committee consents to such fishing.
  
- (c) Regulations may be promulgated further defining or limiting this permissible fishing area in any manner, including prohibiting fishing in certain areas and/or at certain times.

### **7304. Eligibility**

Enrolled members of the Pala Band of Mission Indians may fish in accordance with this Article. Descendants of enrolled members and the legally recognized spouse of an enrolled member may fish if accompanied by the enrolled member who is their ancestor or spouse.

### **7305. Requirements**

- (a) No person may release aquatic wildlife or intentionally stock a waterway with aquatic wildlife without the consent of the Executive Committee. This rule does not apply to:
  - (1) Catch and release practices involving the take of aquatic wildlife for recreation followed immediately by returning such wildlife to the habitat they were taken; and
  - (2) Garden ponds and garden water features not connected to rivers or streams on property used for residential, commercial, or agricultural purposes.
  
- (b) No person may fish by use of electrofishing, explosives, drugs, poisons, medicated bait, firearms, or via altering waterways to create a dam or other intentional structure.



(c) No person may destroy wetland or aquatic habitat to enhance access, increase the stock of aquatic animals, or otherwise further fishing activities, without the consent of the Executive Committee.

**7306. Seasons and Other Limitations Authorized**

(a) Regulations may be promulgated that limit the manner, method, or season for fishing whenever the Administrator finds there is a conservation, public safety, or public welfare need for such regulations. This authority includes the power to prohibit fishing entirely and indefinitely for any species and in any area, and to set fines and other penalties authorized under this Ordinance for violation of the regulations.

(b) Regulations may be promulgated that establish a tribal permitting program for fishing, including but not limited to a tagging program, daily bag limits, or possession limits, and may impose a reasonable fee for such tribal fishing permits.

## **ARTICLE 4. PLANT GATHERING**

### **7401. Purpose**

The purpose of this Article is to sustainably manage plant gathering within the exterior boundaries of the Pala Indian Reservation and to ensure the preservation, protection, enhancement, and perpetuation of the natural resources of the Tribe. The Pala Band of Mission Indians recognizes that tribal members and their families may engage in plant gathering for purposes of creating traditional remedies and medicines, spiritual practices, ceremonial use, and subsistence. The Tribe encourages and supports such activities, undertaken in a traditional manner and practiced in good faith with the purpose of preserving resources for the natural environment and for future use.

### **7402. Applicability**

This Article applies to all persons that gather within the exterior boundaries of the Pala Indian Reservation.

### **7403. Permissible Gathering Areas**

Gathering is allowed on all lands within the exterior boundaries of the Pala Indian Reservation unless prohibited by regulations promulgated under this Article, Protected Area regulations under Article 6, or other law.

### **7404. Eligibility**

- (a) The following persons may gather:
  - (1) Tribal members and their non-tribal spouses, children, and up to one other guest per tribal member;
  - (2) Employees or contractors of the Tribe who are gathering for an official purpose; and
  - (3) Any other person with the permission of the Executive Committee.

### **7405. Good Faith Practices and Requirements**

- (a) Gatherers shall engage in good faith practices, which include but are not limited to:
  - (1) Leaving some share of the resource in place, or only taking the part of the resource needed. For instance, a gatherer might take some branches of a sage plant but leave the remainder of the plant unharmed;
  - (2) Avoiding the harvest of a resource to the point of extinction in any one area;
  - (3) Where a plant is usable without the benefit of the root, gathering in such a way as to preserve the root in the soil for continued growth; and
  - (4) When gathering non-native species, taking care to prevent the spread of invasive plants through cuttings or seeds.

- (b) Commercial gathering is prohibited except with the consent of the Executive Committee.
- (c) Gathering of protected species described in Article 5 is prohibited.
- (d) Non-traditional gathering methods, such as gathering with the use of motorized tools or tools which require electricity to operate, are prohibited.
- (e) The altering of waterways or other natural features on tribal lands to improve or change habitat for purposes of enhancing gathering activities is prohibited without the consent of the Executive Committee and without obtaining any applicable Tribal or Federal permits.
- (f) No person shall gather bird nests or nesting habitat during nesting season, from March 15 to September 15 each year.

**7406. Seasons and Other Limitations**

- (a) Regulations may be promulgated that limit the manner, method, or season for gathering whenever the Administrator finds there is a conservation, public safety, or public welfare need for such regulations. This authority includes the power to prohibit gathering entirely and indefinitely for any species and in any area, and to set fines and other penalties authorized under this Ordinance for violation of the regulations.

## ARTICLE 5. PROTECTED SPECIES

### 7501. Purpose

The Pala Band of Mission Indians finds that various species of wildlife and plants that inhabit Pala lands during their lifecycle are in danger of or threatened with extinction, or otherwise require conservation for ecosystem health or cultural reasons. The Tribe's policy is to protect and preserve these species through voluntary conservation efforts and the provisions of this Article and Ordinance.

### 7502. Applicability

This Article applies to all persons and activities that affect or may affect protected species within the exterior boundaries of the Pala Indian Reservation.

### 7503. Protected Species

- (a) The following species are protected under this Article:
  - (1) Species listed under the Endangered Species Act, 16 U.S.C. §1531 *et seq.*;
  - (2) Species listed under the Migratory Bird Treaty Act, 16 U.S.C. § 703 *et seq.*;
  - (3) The Bald Eagle and Golden Eagle listed under the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 *et seq.*;
  - (4) Species listed under the California Endangered Species Act, Cal. Fish and Game Code § 2050 *et seq.*; and
  - (5) Species listed by the Pala Band of Mission Indians pursuant to regulations issued under this Ordinance.
  
- (b) Species may be listed under subparagraph (a)(5) by issuing regulations that find a species is in need of conservation because of any of the following factors:
  - (1) the present or threatened destruction, modification, or curtailment of its habitat or range;
  - (2) overutilization for commercial, recreational, scientific, or educational purposes;
  - (3) disease or predation;
  - (4) the inadequacy of existing regulatory mechanisms;
  - (5) other natural or manmade factors affecting its continued existence; or
  - (6) the species' current or traditional cultural importance to the Pala Band of Mission Indians.
  
- (c) Regulations may be promulgated for species listed under subparagraphs (a)(4) and (a)(5) that restrict take that would otherwise be allowed by this Ordinance.
  
- (d) The protections provided under this Article may be removed from species listed under subparagraphs (a)(4) and (a)(5) by a regulation finding that the species does not require or no longer requires conservation on Pala lands.

### 7504. Prohibitions on Take of Protected Species

(a) Species listed pursuant to subparagraphs 7503(a)(4)-(5) may not be taken in violation of the protections provided under this Article, except that:

- (1) Where a taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, the taking may be authorized through completing any environmental review and/or permitting processes required by this Ordinance where the environmental review and/or permitting process results in a finding that the incidental taking will be minimized and mitigated to the maximum extent practicable and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (2) Taking by or under the supervision of Tribal government officials for scientific, veterinary, or educational purposes or to enhance the propagation or survival of the affected species is permissible where not prohibited by regulation.

(b) The prohibitions on take of protected species provided in the federal and state laws referenced in subparagraph 7503(a) and regulations issued under those laws are hereby incorporated by reference into the Pala Environmental Ordinance. Protected species shall be granted the same limitations on take under tribal law as are extended to them under federal and state laws and their regulations. Any changes or additions to those laws and their regulations after the adoption of this Article shall be automatically incorporated into the Pala Environmental Ordinance.

(c) A violation of the federal and state laws and their regulations referenced in subparagraph 7503(a), as determined by the Pala Band of Mission Indians or the U.S. Fish and Wildlife Service, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

(d) Notwithstanding the provisions of paragraph (b), the limitations on take adopted into tribal law shall not be construed to require a protected species-specific tribal permitting program or interagency consultation within the Pala government.

#### **7505. Exceptions**

Protected species individuals that pose an immediate danger may be taken by any means.

#### **7506. Invasive Species**

(a) No person may introduce invasive species on to Pala lands. Planting, transporting in a manner that spreads invasive species individuals or seeds, releasing, raising, or growing invasive species is prohibited.

(b) Invasive species are those species included in the list of invasive species in California developed by the Invasive Species Council of California and its advisory committee or by its legal successor.

(c) Regulations may be promulgated that identify additional species as invasive on Pala lands, or that remove species listed under paragraph (b) as invasive on Pala lands.

## ARTICLE 6. PROTECTED AREAS

### **7601. Purpose**

Certain areas within the Pala Indian Reservation have been or may be granted various forms of Protected Area status in order to preserve, protect, enhance, and perpetuate all the natural resources of Pala lands for the benefit of Tribal Members and their descendants. Protected Areas may be designated based on their importance to wildlife and plant populations, as mitigation for development conducted in other areas of the Reservation or off-reservation, or for any other ecosystem, environmental, or aesthetic reason.

### **7602. Applicability**

This Article applies to all persons and activities that affect or may affect Protected Areas within the exterior boundaries of the Pala Indian Reservation.

### **7603. Designation**

(a) Regulations may be promulgated designating any area within the exterior boundaries of the Pala Indian Reservation as a Protected Area.

(b) Protected Area regulations shall:

- (1) Describe the ecosystem, environmental, or aesthetic functions that the Administrator seeks to protect in the Protected Area; and
- (2) Describe any restrictions on impacts to or activities within the area imposed by the regulation

(c) Protected Area regulations may:

- (1) Regulate, restrict, or prohibit any use of the area, including for hunting, trapping, fishing, or gathering, and for residential, commercial, or industrial development;
- (2) Allow preexisting residential, commercial, or industrial developments within the Protected Area to continue engaging in the normal activities conducted by that development despite impacts to the ecosystem, environmental, or aesthetic functions protected by the Protected Area; and
- (3) Establish permitting requirements or consistent procedures for activities taken in a Protected Area.

### **7604. Riparian Protection Area**

(a) The Tribe designates, as a Protected Area under this Article, a Riparian Protection Area to conserve aquatic resources and related habitat surrounding the San Luis Rey River.

(b) Any activity occurring in the Riparian Protection Area that triggers environmental review must include consideration of the impacts of the activity to riparian functions, and any

environmental permit prepared for such activity may include provisions that preserve riparian functions through modifications to the activity or requirements for mitigation.

(c) It is prohibited to remove sand, gravel, or rocks from the Riparian Protection Area without an environmental permit.

(d) Where all necessary permits, orders, or approvals required by the Tribe are obtained, the following uses may be allowed within the Riparian Protection Area without additional permitting:

- (1) Conservation and restoration of soil, water, plants, and wildlife;
- (2) Outdoor recreation and nature study;
- (3) Foot, bicycle, and/or horse paths and bridges;
- (4) Farming, gardening, nursery, conservation, forestry, and harvesting; or
- (5) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipe lines, aqueducts, and tunnels.

#### **7605. Environmental Review and Permitting**

Where an environmental review is triggered under Chapter 3 of this Ordinance for an activity occurring in a Protected Area, any Environmental Assessment or Environmental Impact Statement that is required for the triggering activity shall include consideration of potential impacts to the ecosystem, environmental, or aesthetic functions protected in that Protected Area and identified in its designation under subparagraph 7603(b)(1).

#### **7606. Mitigation Requirements**

(a) Where an environmental permit is required under Chapter 3 of this Ordinance for an activity occurring in a Protected Area, the permit shall include requirements to avoid, minimize, and mitigate any loss of ecosystem, environmental, or aesthetic functions the area was designated to support under subparagraph 7603(b)(1).

- (1) An order of preference is established such that environmental permits shall seek avoidance of the losses identified in subparagraph (a) first, then minimization, and finally compensatory mitigation for any losses that cannot be avoided or minimized.

(b) In coordination with the permit applicant, the Administrator shall develop compensatory mitigation requirements where necessary under subparagraph (a)(1). Such mitigation requirements shall have the goal of net gain in terms of ecosystem, environmental, or aesthetic functions protected under the Protected Area's designation, but must be at least sufficient to replace the functions lost due to the permitted action's impacts.

- (1) Greater than one-to-one compensatory mitigation is the goal of these provisions, and may be required after considering such factors as the likelihood of success, differences between the functions lost at the impact site and the functions expected to be produced by the compensatory mitigation project, temporal losses of resource functions after impacts and before completion of the mitigation project, the difficulty of restoring or establishing the desired resource type and functions, and/or the distance between the affected resource and the compensation site.

(c) Permittees may achieve mitigation through one of the following four methods, listed in order of preference: restoration, enhancement, establishment, or preservation.

(d) A minimum one-to-one acreage or linear foot replacement metric must be used to quantify the mitigation requirement. For example, if a proposed permit would unavoidably impact 50 linear feet of the Riparian Protection Area by building or altering the river bank, mitigation must include restoring 50 feet of the Riparian Protection Area.

(e) The Administrator shall require on-site mitigation to off-site mitigation, unless on-site mitigation is impracticable.

(f) Notwithstanding the provisions of subparagraphs (a) and (b), the Administrator may allow out-of-kind mitigation in the Administrator's discretion. The Administrator shall, however, require in-kind mitigation to out-of-kind mitigation, unless out-of-kind mitigation is impracticable.

(g) The Administrator may require a mitigation plan for review and finalization before permit issuance, to include such provisions, without limitation, as:

- (1) objectives of the mitigation work;
- (2) site selection;
- (3) site protection instruments;
- (4) baseline information;
- (5) a mitigation work plan with timeline;
- (6) maintenance and monitoring plans;
- (7) performance standards; and
- (8) financial assurances sufficient to guarantee the completion of the mitigation project.

(h) Any federal, state, local, or tribal in lieu fee program or mitigation bank that is applicable to the project may be used to satisfy this Section, at the discretion of the Administrator, in place of permittee-responsible compensatory mitigation, so long as all mitigation work will be conducted within the exterior boundaries of the Pala reservation.

(i) Regulations may be adopted that establish additional standards and procedures for mitigation requirements in permitting actions, or that establish a Pala Band in lieu fee program or mitigation bank.

**7607. Off Road Vehicle Restrictions**

Off Road Vehicles may not be used in any Protected Areas, except as allowed through regulation.

**7608. Maps**

PED shall maintain maps of all Protected Areas and shall provide access to the maps at no cost to any requester that is or may be subject to this Chapter of the Pala Environmental Ordinance. PED shall allow copying at reproduction cost during regular business hours at the reception desk of the Pala Administration Building and the Pala Environmental Department.



## CHAPTER 8. PESTICIDES

### ARTICLE 1. GENERAL PROVISIONS

#### **8101. Title**

This Chapter shall be known and cited as the “Pala Pesticides Ordinance.”

#### **8102. Purpose and Statement of Policy**

(a) The Pala Band of Mission Indians finds that unregulated pesticide use poses a threat to the environment and to human health, welfare, and safety. Therefore, the Pala Band adopts this Ordinance to provide for the regulation of pesticide use within the exterior boundaries of the Pala Reservation.

(b) This Ordinance establishes a body of tribal pesticide management law, incorporates and makes enforceable under tribal law certain provisions of the federal and California pesticide regulatory systems, and authorizes such pesticide regulations as may be necessary in the public interest.

(c) The Pala Band of Mission Indians’ goal is to minimize the threats to the environment and to human health, welfare, and safety posed by pesticide use. To effect this goal, the Pala Band of Mission Indians endorses the following practices:

- (1) preferring alternative, low-toxicity methods of pest control to registered pesticides whenever possible, including, for example, detergent and water, boric acid, pesticide soaps and oils, baits, traps, vacuuming, flooding, nest removal, and physical barriers;
- (2) where use of registered pesticides is necessary, selecting the least toxic product that is appropriate for the pest management problem;
- (3) preparing and implementing Integrated Pest Management plans for institutions such as schools, child care centers, government facilities, and large businesses; and
- (4) consulting with PED for assistance in selecting alternative and/or the least toxic pesticide option(s).

#### **8103. Definitions**

(a) *General.* The definitions used in the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., and in the provisions of Division 6 and 7 of the California Food and Agricultural Code and their implementing regulations which pertain to pesticides and pest control operations are adopted here. Except for all terms explicitly defined in this Section or in regulations issued under this Chapter, to the extent that any definition in the California statutes and regulations is inconsistent with any definition in the federal statute and regulations, the federal definitions shall control.

(b) For ease of reference, or in addition to the definitions incorporated under paragraph (a), the following terms have these meanings:

- (1) CERTIFIED APPLICATOR means any individual who is certified or licensed to apply restricted use pesticides under the terms of this Ordinance.
- (2) DEALER means any person who distributes, sells, ships, delivers for shipment, or receives and then delivers any restricted use pesticide to any person, or who offers to do so.
- (3) EPA means the United States Environmental Protection Agency.
- (4) FIFRA means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*
- (5) GENERAL USE PESTICIDE means a pesticide for which no state certification or license is required for application, such as insecticides designed for household use by the general public.
- (6) PEST means (i) any insect, rodent, nematode, fungus, weed, or (ii) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the EPA declares to be a pest under FIFRA § 136w(c)(1), or that the Director of the California Department of Pesticide Regulation declares, by regulation, to be a pest, or that the Pala Band declares, by regulation, to be a pest.
- (7) PESTICIDE means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any nitrogen stabilizer, subject to the exceptions provided in FIFRA § 136(u).
- (8) RESTRICTED USE PESTICIDE means a pesticide for which a federal, state, or tribal certification or license is required in order to legally apply the pesticide.
- (9) SERVICE CONTAINER means a container, not including the original labeled container of a registered pesticide provided by the registrant, that is used to hold, store, or transport the pesticide or the use-dilution of the pesticide, and that is not used for sale or distribution of the pesticide.

**8104. Applicability**

This Ordinance applies to all persons that use, apply, handle, deal in, sell, transport, store, or dispose of pesticides within the exterior boundaries of the Pala Indian Reservation.

**8105. Enforcement**

(a) Violations of any of the provisions of this Ordinance are enforceable as provided in Chapter 11 of the Pala Environmental Ordinance. In addition, the Tribe may penalize applicators and dealers by a refusal to recognize an applicator or dealer's California certificate or license within

the exterior boundaries of the Pala Reservation, indefinitely or for a designated term, for any violations of the provisions of this Ordinance or its implementing regulations.

(b) Should the Tribe refuse to recognize an applicator or dealer's certificate or license under paragraph (a) of this Section, the applicator or dealer shall not offer any services or products within the exterior boundaries of the Pala Reservation that would require such certificate or licensure in California outside of Indian country.

## **ARTICLE 2. REQUIREMENTS**

### **8201. Registration Requirement**

(a) Only pesticides registered with the State of California under Title 3, Division 6 of the California Code of Regulations may be applied within the exterior boundaries of the Pala Reservation.

(b) Notwithstanding paragraph (a), regulations may be adopted prohibiting or limiting in any way the use of pesticides, even though registered with California and lawful to apply in California, if such prohibitions or restrictions are necessary to protect the environment or the public health and welfare of the Pala Band of Mission Indians.

### **8202. Label Compliance Requirement**

(a) All pesticides sold, stored, or applied within the exterior boundaries of the Pala Reservation must comply with the labeling requirements of Title 3, §§ 6235 – 6243 of the California Code of Regulations.

(b) It is unlawful to use any registered pesticide in a manner inconsistent with its labeling.

## **ARTICLE 3. APPLICATORS AND DEALERS**

### **8301. Certification and Licensing**

(a) If a pesticide application or dealer activity would require certification or licensure if performed in California, an applicator or dealer must possess a valid and applicable California certificate or license issued in accordance with Title 3, §§ 6500 – 6584 of the California Code of Regulations to perform such a pesticide application or dealer activity within the exterior boundaries of the Pala Reservation.

(b) Where a California pesticide applicator certificate or license is required under paragraph (a), pesticide applicators must also obtain federal recognition of their California certificate or license under 40 C.F.R. § 171.11(e).

(c) Pesticide applicators and dealers must keep a copy of any California or federal pesticide certificates or licenses issued to them available for inspection during all pesticide application or dealer activities.

(d) Regulations may be adopted that impose additional certification or licensing requirements upon pesticide applicators and dealers, including requirements for applicators and dealers to obtain a tribal certificate or license prior to operating within the exterior boundaries of the Pala Reservation. A fee may be charged for such tribal certificates or licenses.

### **8302. General Standards of Care**

(a) Each person performing pest control shall:

- (1) Review and be knowledgeable regarding any Integrated Pest Management plan in effect for the pest control site and any Integrated Pest Management plan adopted for the Pala reservation;
- (2) Use only pest control equipment that is in good repair and safe to operate;
- (3) Perform all pest control in a careful and effective manner;
- (4) Use only methods and equipment suitable to ensure application of pesticides consistent with the pesticides' label;
- (5) Adequately supervise the use of restricted use pesticides; and
- (6) Exercise reasonable precautions to avoid contamination of the environment.

### **8303. Monitoring and Inspection**

(a) The Administrator may require that any or all certified applicators provide the Administrator with 24 hours' notice before any pest control activities on Pala land.

(b) The Administrator may require that certified applicators allow a Pala Tribal government representative to observe pesticide application, and the Administrator may require that applicators allow a State of California representative to observe pesticide application.

(c) To ensure compliance with this Ordinance, the Administrator may enter, inspect, and/or sample:

- (1) fields, areas, structures, and greenhouses where pesticides are handled, stored or applied;
  - (2) growing crops and harvested commodities;
  - (3) equipment (including protective clothing and equipment) used to store, transport or handle pesticides;
  - (4) facilities used by employees; and
  - (5) pesticides and tank mixtures thereof;
- during business hours or at any other reasonable time if necessary to ensure immediate compliance.

#### **8304. Recordkeeping**

(a) Any certified applicator or other person required to prepare and maintain records of pest control activities under California Code of Regulations Title 3, § 6624, shall prepare and maintain records of their pesticide applications within the exterior boundaries of the Pala Reservation that shall include the following information for each pest control operation:

- (1) Date of application;
- (2) Name of the operator of the property treated;
- (3) Location of property treated;
- (4) Crop commodity or site treated;
- (5) Total acreage or units treated at the site; and
- (6) Pesticide, including the EPA and/or State registration number which is on the pesticide label, and amount used.

(b) A licensed pest control dealer shall prepare and maintain records of their restricted use pesticides sold or delivered within the exterior boundaries of the Pala Reservation, including the following information:

- (1) The purchaser's name and address;
- (2) The product purchased, and the amount;
- (3) The date of purchase;
- (4) The operator identification number(s) specified in California Code of Regulations Title 3, § 6622 on the invoice, or a statement on the invoice indicating that the purchaser was not required to obtain an operator identification number pursuant to § 6622; and
- (5) The location where the pesticide was delivered, including the name of the person or business that received the shipment, if the dealer delivered the pesticide.

(c) Any records required under paragraphs (a) or (b) shall be retained for inspection at the offices of the applicator or dealer for two years.

(d) Any certified applicator, licensed pest control dealer, or other person required to retain records under paragraphs (a) or (b) shall make those records available to the Administrator upon request during normal business hours.

(e) The Administrator may require annual reporting of applicator or dealer records.

(f) It is a violation of this Ordinance to make any false or fraudulent record or report.

## **ARTICLE 4. HANDLING OF PESTICIDES**

### **8401. Storage**

(a) Except as provided in paragraph (b), any container that holds, or has held, any pesticide, when stored or transported, shall carry the registrant's label.

(b) Service containers, other than those used by a person engaged in the business of farming when the containers are used on the property the person is farming, shall be labeled with:

- (1) The name and address of the person or firm responsible for the container;
- (2) The identity of the pesticide in the container; and
- (3) The word "Danger," "Warning," or "Caution," in accordance with the label on the original container.

(c) Pesticides must be stored in accordance with the instructions included on the pesticides' labels and in accordance with any other applicable federal or state standards, including the federal Standards for Pesticide Containers and Containment found at 40 C.F.R. Parts 156 and 165.

(d) Pesticides, emptied containers or parts thereof, or equipment that holds or has held a pesticide, shall not be stored, handled, emptied, disposed of, or left unattended in such a manner or at any place where they may present a hazard to persons, animals (including bees), food, feed, crops, or property. The Administrator may take possession of such unattended pesticides or emptied containers to abate such hazard.

### **8402. Disposal**

(a) General and restricted use pesticides must be disposed of according to the requirements of Chapter 6 of this Ordinance and the federal regulations incorporated by reference into that Chapter. Pesticides may not, for example, be disposed of through household solid waste systems or through any wastewater system.

(b) General use pesticides may be, subject to the requirements and restrictions provided under Chapter 6, Article 4 of this Ordinance, accepted by the Pala Transfer Station.

### **8403. Spills**

(a) Any release of pesticides into the environment that is inconsistent with the label requirements of that pesticide constitutes an unauthorized spill under this Ordinance. Any person causing or allowing a spill shall take immediate action to halt the release and prevent or minimize any resulting damage.

(b) Any person that knows, or has reason to know, that a pesticide spill is occurring, occurred, or may occur shall immediately report the spill to the Pala Fire Department and to the Administrator. Any person bearing responsibility for the spill shall remain at the site until the spill is addressed by the Fire Department or Administrator.



## **CHAPTER 9. UNDERGROUND STORAGE TANKS**

### **9001. Purpose**

The purpose of this Article is to protect human health, safety, welfare, and the environment by regulating underground storage tanks (USTs) within the Pala Reservation.

### **9002. Definitions**

The words and phrases in this Chapter shall have the same meanings as defined in 40 C.F.R. § 280.12.

### **9003. Applicability**

This Article applies to all persons who own, operate, install, modify, or remove an underground storage tank (UST) within the Pala Reservation.

### **9004. Incorporation of Federal UST Regulations**

(a) The regulations included in 40 C.F.R., Part 280 – Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (Federal UST Regulations) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the Federal UST Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of the U.S. EPA or as the primary enforcement authority in accordance with the Federal UST Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the Federal UST Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by the U.S. EPA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

### **9005. UST Inventory**

The Administrator shall prepare and maintain an inventory of all underground storage tanks within the Pala Reservation.

### **9006. Reporting and Cleanup Requirements**

(a) Owners and operators of UST systems must immediately report to the Administrator, and follow the procedures in 40 C.F.R. § 280.52, if any of the following conditions occur:

- (1) The discovery by an owner, operator, or other person of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (2) Unusual operating conditions observed by an owner or operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; or
- (3) Monitoring results from a release detection method required under 40 C.F.R. §§ 280.41 and 280.42 indicate a release may have occurred, unless:
  - (A) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
  - (B) In the case of inventory control, a second month of data does not confirm the initial result.

(b) Owners or operators of UST systems must contain and immediately clean up a spill or overfill, report the spill or overfill to the Administrator, and begin corrective action in accordance with 40 C.F.R. §§ 280.60 through 280.67 in the following cases:

- (1) A spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the Administrator, or that causes a sheen on nearby surface water; and
- (2) A spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 C.F.R. Part 302).

(c) An owner or operator of a UST system must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or other reasonable amount specified by the Administrator, and any spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the Administrator, the owner or operator must immediately notify the Administrator.

#### **9007. Inspections**

The Administrator shall, at minimum, annually inspect all USTs within the Pala Reservation for compliance with applicable tribal and federal laws.

## CHAPTER 10. HAZARDOUS SUBSTANCES

### 10001. Purpose

The purpose of the Pala Hazardous Substances Ordinance is to control hazardous substances within the exterior boundaries of the Pala Reservation for the protection of public health, safety, welfare, and the environment.

### 10002. Administrator

The Administrator of this Chapter shall be the Pala Fire Department.

### 10003. Definitions

For the purposes of this Chapter the following words and phrases shall have the following meanings:

- (a) EMPLOYER means a person engaged in a business who has employees.
- (b) EMPLOYEE means an employee of an employer who is employed in a business of his employer.
- (c) EXTREMELY HAZARDOUS SUBSTANCE (EHS) means a substance listed in Appendices A and B of 40 C.F.R. Part 355, which are hereby incorporated into the Pala Environmental Ordinance. Any changes or additions to Appendices A and B of 40 C.F.R. Part 355 after the adoption of this provision shall be automatically incorporated into this Ordinance.
- (d) HAZARDOUS CHEMICAL means a chemical defined as hazardous under 29 C.F.R. § 1910.1200(c).
- (e) HAZARDOUS SUBSTANCE means any of the following:
  - (1) Any hazardous substance as defined by 29 C.F.R. § 1910.120(a)(3);
  - (2) Any substance designated as hazardous pursuant to 40 C.F.R. § 302;
  - (3) Any hazardous substance as defined by 42 U.S.C. § 9601(14);
  - (4) Any hazardous waste as defined by paragraph 6104(o); or
  - (5) Any HAZARDOUS CHEMICAL as defined by 10003(d).
- (f) CALIFORNIA FIRE CODE (CFC) means the latest edition of the California Fire Code published by the California Building Standards Commission.
- (g) MATERIAL SAFETY DATA SHEET (MSDS) or SAFETY DATA SHEET (SDS) means a hazardous substance information sheet developed pursuant to 29 C.F.R. § 1910.1200(g).
- (h) OSHA shall mean the U.S. Department of Labor Occupational Safety and Health Administration.

(i) SAFETY DATA SHEET (SDS) or MATERIAL SAFETY DATA SHEET (MSDS) means a hazardous substance information sheet developed pursuant to 29 C.F.R. § 1910.1200(g).

(j) THRESHOLD PLANNING QUANTITY (TPQ) means for a substance listed in Appendices A and B of 40 C.F.R. Part 355, the quantity listed in the column “threshold planning quantity” for that substance.

**10004. Applicability**

This Chapter applies to any person generating, using, handling, or managing a hazardous substance within the exterior boundaries of the Pala Reservation.

**10005. Adoption and Incorporation of California Fire Code**

(a) Part V of the California Fire Code, entitled “Hazardous Materials,” and any definitions or general provisions provided in the California Fire Code necessary to implement Part V, is hereby adopted by the PBMI and incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to Part V of the California Fire Code after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) For the purposes of this Section, the definition of “Fire Code Official” in the incorporated CFC shall mean the Administrator and/or any other person(s) designated by the Executive Committee.

(c) For the purposes of this Section, references to the term “fire department” in the CFC shall mean the Pala Fire Department.

(d) The Administrator shall be responsible for administering, implementing, and enforcing the provisions of the incorporated CFC, including but not limited to the following areas:

- (1) Release of hazardous materials;
- (2) Material Safety Data Sheets;
- (3) Hazard identification signs;
- (4) General safety precautions;
- (5) Spill control and secondary containment;
- (6) Ventilation and sprinkler systems;
- (7) Separation of incompatible hazardous materials;
- (8) Supervision and monitoring; and
- (9) Storage, use, dispensing, handling, and transportation.

**10006. Incorporation of OSHA Hazardous Substance Regulations**

(a) The regulations included in 29 C.F.R. Parts 1910.101 through 1910.121 and 1910.1000 through 1910.1499 (OSHA Hazardous Substance Regulations) are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to the OSHA

Hazardous Substances Regulations after the adoption of this Section shall be automatically incorporated into this Ordinance.

(b) The Pala Band of Mission Indians reserves the right to administer permitting, inspection, enforcement, and all other authorities over any person or activity that is subject to the federal regulations described in paragraph (a) on behalf of OSHA or as the primary enforcement authority in accordance with the OSHA Hazardous Substances Regulations, the Pala Environmental Ordinance, or both.

(c) A violation of the OSHA Hazardous Substances Regulations described in paragraph (a), as determined by the Pala Band of Mission Indians or by OSHA, constitutes a violation of the Pala Environmental Ordinance that is enforceable by the Tribe according to this Ordinance.

#### **10007. Workplace Communication Requirements**

(a) In compliance with 29 C.F.R. § 1910.1200 – Hazard Communication, any employer, business, or other organization within the Reservation where employees or other persons may use or be exposed to one or more hazardous chemicals shall:

- (1) Prepare a written hazard communication program;
- (2) Prepare and maintain a list of hazardous chemicals in the workplace;
- (3) Maintain all required safety data sheets (SDSs);
- (4) Ensure that all hazardous chemicals are properly labeled; and
- (5) Provide all required information and training to employees that may be exposed to hazardous chemicals.

(b) An employer, business, or other organization that is required to meet the requirements of subparagraphs (a)(1) through (a)(3) shall maintain these documents in a place or manner that is readily accessible to employees in their work areas during their work shifts.

(c) An employer, business, or other organization that is required to meet the requirements of (a)(5) shall maintain records demonstrating compliance with this subparagraph for a period of at least 3 years.

#### **10008. Hazardous Chemical Reporting Requirements**

(a) A business or organization that is required to prepare or have available an SDS pursuant to § 10006 or § 10007 shall submit a hazardous chemicals report to the Administrator if any of the following conditions are met:

- (1) A hazardous chemical that is an extremely hazardous substance (EHS) is present at the premises of the business or organization at any one time in an amount equal to or greater than 500 pounds (227 kg-approximately 55 gallons) or the Threshold Planning Quantity (TPQs), whichever is lower;
- (2) A hazardous chemical that is not an EHS is present at the premises of a business or organization at any one time in an amount equal to or greater than the following threshold levels for that hazardous chemical:

- (A) For any hazardous chemical that does not meet the criteria in clause (a)(2)(B) or (a)(2)(C) of this Section, the threshold level is 10,000 pounds (or 4,540 kg);
  - (B) For gasoline at a retail gas station, the threshold level is 75,000 gallons (approximately 283,900 liters) (all grades combined); or
  - (C) For diesel fuel at a retail gas station, the threshold level is 100,000 gallons (approximately 378,500 liters) (all grades combined); or
- (3) The Administrator requests a hazardous chemicals report.

(b) A business or organization required to submit a hazardous chemicals report under this Section shall prepare and submit the report in a manner and form prescribed by the Administrator.

(c) A hazardous chemicals report prepared and submitted to the Administrator pursuant to this Section shall, at minimum, meet the requirements of 40 C.F.R. Parts 370.10 through 370.45 and 370.66, which are hereby incorporated by reference into the Pala Environmental Ordinance. Any changes or additions to 40 C.F.R. §§ 370.10 through 370.45 and 370.66 after the adoption of this Section shall be automatically incorporated into this Ordinance.

(d) For the purposes of this Section, the following terms used in 40 C.F.R. §§ 370.10 through 370.45 and 370.66 shall have the following definitions:

- (1) The term “State Emergency Response Commission (SERC)” shall mean the Executive Committee; and
- (2) The terms “Local Emergency Planning Committee (LEPC)” and “fire department” shall mean the Administrator, unless otherwise designated by the Executive Committee.

**10009. Hazardous Substance Release Requirements**

(a) No person shall release any hazardous substance into the air, land, or waters of the Reservation, unless:

- (1) The release is in compliance with an applicable PBMI issued permit;
- (2) The release is in compliance with an applicable federal permit; and/or
- (3) The release is authorized under tribal or federal law.

(b) For the purposes of this Section “release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, or causing or allowing any of the above.

(c) Any person that knows, or has reason to know, that an unauthorized hazardous substance release is occurring, occurred, or may occur, in violation of paragraph (a) shall immediately notify the Administrator of the potential or existing release.

(d) Any person causing or allowing a release in violation of paragraph (a) shall take immediate action to halt the release and prevent or minimize any resulting damage.

**10010. Inspections**

(a) The Administrator may enter and inspect any building, facility, and premises subject to this Chapter, and inspect and review any records required by this Chapter, to determine compliance with this Chapter or gather information on hazardous substances for emergency planning purposes. The owner, operator, or other responsible person shall provide the Administrator with information about and access to the locations of hazardous substances at the building, facility, or premises upon request.

(b) The Administrator shall at minimum, annually enter and inspect any building, facility, and premises subject to this Chapter, and inspect and review records required by this Chapter, to determine compliance with this Chapter where an employer, business, or other organization employs more than 25 persons at the premises. The owner, operator, or other responsible person shall provide the Administrator with information about and access to the locations of hazardous substances at the building, facility, or premises upon request.

## CHAPTER 11. ENFORCEMENT

### 11001. Entry and Inspection

(a) The Administrator or tribally authorized law enforcement officials may enter any property, premises, or place for the purpose of inspecting or investigating any activity subject to the provisions of the Pala Environmental Ordinance to ensure compliance with the Environmental Ordinance, including but not limited to, applicable permit conditions, emissions standards, plan requirements, orders, rules, and regulations.

(b) The Administrator or tribally authorized law enforcement officials may enter the premises or location of activities subject to this Ordinance at reasonable times to inspect such activities and otherwise perform the duties established pursuant to this Ordinance. The Administrator shall make a reasonable effort to locate the owner of, or a person with authority over, the premises to request entry. If entry is refused, the Administrator shall have recourse to the remedies provided by law to secure entry.

(c) The Administrator or tribally authorized law enforcement officials may enter the premises or location where a violation or potential violation of this Ordinance is in progress regardless of the time and without locating or seeking the permission of the owner of, or a person with authority over, the premises where the violation or potential violation could pose an immediate threat to public health, safety, welfare, or the environment.

(d) The Administrator, tribally authorized law enforcement, or tribally authorized fire agency officials may enter any property at any time to inspect an open burn in progress.

### 11002. Duty to Report and Correct

- (a) Any person that violates this Ordinance shall have a duty to immediately:
- (1) Report the violation to the Administrator upon discovery of the violation;
  - (2) Wherever possible, correct the source(s) of the violation and prevent recurrences; and
  - (3) Take measures to minimize the damages that have or will result from the violation.

(b) Civil penalties allowable under this Ordinance may be reduced or waived where a person that violates this Ordinance takes all reasonable efforts to comply with paragraph (a).

(c) Any person that witnesses a violation of this Ordinance shall have a duty to report the violation to the Administrator, a PBMI authorized law enforcement official, or any other PBMI designated official.

### 11003. Enforcement Authority

(a) Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of the Pala Environmental



Ordinance, including regulations, permits, or orders issued, adopted, or approved pursuant to this Ordinance, the Administrator may:

- (1) Issue a written Warning with required corrective actions that must be taken to avoid further enforcement action;
  - (2) Issue a written Notice of Violation with an order requiring compliance with applicable provisions of this Ordinance;
  - (3) Issue one or more of the penalties and remedies listed under paragraph 11004(a);
  - (4) Issue an immediately effective order to cease and desist or correct a violation and/or damages resulting from the violation;
  - (5) Take immediate remedial action to cease and desist or correct a violation and/or damages resulting from the violation, where the violation or resulting damages are presenting an imminent and substantial threat to public health, safety, welfare, or the environment; and/or
  - (6) Bring an administrative action before the PEB in accordance with § 12002 to seek one or more of the penalties and remedies described in § 11004(b).
- (b) Any Notice of Violation issued by the Administrator pursuant to this Section shall cite:
- (1) The nature, time, date, and location of the violation;
  - (2) The Section(s) of this Ordinance, regulations, and/or permit conditions applicable to the violation;
  - (3) The name and address of the responsible person;
  - (4) Contact information for the Administrator; and
  - (5) Any required action(s) that must be taken by the responsible person.

(c) Any person subject to an enforcement action by the Administrator under subparagraphs (a)(2) through (a)(5) may seek administrative review of the Administrator action. Any request for an administrative review hearing must be submitted in accordance with § 12001. Notwithstanding a request for administrative review, any orders revoking a permit, or to cease and desist or abate a violating activity shall remain in effect until rescinded by a written appeals decision.

#### **11004. Penalties and Remedies**

(a) Any person found by the Administrator to be in violation of the Pala Environmental Ordinance, including regulations, permits, or orders issued, adopted, or approved pursuant to this Ordinance, may be subject to one or more of the following administrative penalties and remedies:

- (1) Payment of a fine not to exceed \$100 per violation per day except where otherwise established by regulation;
- (2) Seizure of any personal property used in committing a violation of this Ordinance, including but not limited to equipment, tools, weapons, or motor vehicles;
- (3) Suspension or revocation of a permit issued pursuant to the Pala Environmental Ordinance;
- (4) An order to remediate damages that result from the violation, including to persons, property, or the environment;
- (5) An order to prepare and implement a compliance work plan, subject to monitoring by the Administrator; and/or
- (6) Payment of the costs for any damages to the Tribe and/or other persons that result from the violation, including but not limited to one or more of the following:
  - (A) Costs of any associated remedial actions;

- (B) Any expenses incurred in investigating and evaluating a violation;
- (C) Any expenses incurred in investigating and evaluating damages caused by a violation; and/or
- (D) Any administrative costs incurred as a result of this matter.

(b) In an enforcement action before the PEB brought by the Administrator, any person found to be in violation of the Pala Environmental Ordinance, including regulations, permits, or orders issued, adopted, or approved pursuant to this Ordinance, may be subject to one or more of the following penalties:

- (1) A civil fine not to exceed \$1,000 per day per violation, with this maximum civil fine subject to adjustment by regulation to reflect changes in the Consumer Price Index;
- (2) A temporary restraining order, preliminary injunction, or permanent injunction;
- (3) Forfeiture of any personal property used in committing a violation of this Ordinance, including equipment, tools, weapons, or motor vehicles;
- (4) The costs of remedial action to be taken by the Administrator to correct a violation or resulting damages;
- (5) For non-Tribal members:
  - (A) Temporary or permanent exclusion from the Reservation; and/or
  - (B) Suspension or termination of rights to engage in commercial dealings or consensual activities on the Reservation;
- (6) One or more of the penalties and remedies listed under paragraph (a).

(c) Regulations may be adopted that prescribe a set penalty schedule for certain types or categories of violations. Penalty schedules may increase penalties based on past violations, such that, for example, a second offense incurs a greater penalty than the first offense, and may include lists of mitigating and aggravating factors. Once a set penalty schedule has been established by regulation, the Administrator, PEB, and Tribal Court shall impose penalties as described in the schedule.

(d) The PEB or Tribal Court may, if a temporary restraining order or preliminary injunction is sought under subparagraph (b)(2), require the filing of a bond or equivalent security.

(e) For items seized by the Administrator pursuant to subparagraph (a)(2), the Administrator shall prepare a written inventory of all items seized and a copy of the inventory shall be given to the items' owner(s). The seized items shall be stored by the Administrator in a secure manner until returned to the owner(s) or forfeited by final administrative or judicial order.

## CHAPTER 12. ADMINISTRATIVE AND JUDICIAL REVIEW

### 12001. Review and Appeals of Administrator Decisions

(a) Any person aggrieved by a decision or action of the Administrator may request a hearing by the Pala Environmental Board to review the decision or action.

(b) Any person subject to an enforcement action, penalty, or remedy taken or imposed by the Administrator under this Ordinance may appeal the enforcement action, penalty, or remedy taken or imposed in a hearing conducted by the PEB.

(c) Notwithstanding a request for a PEB hearing, any orders revoking a permit, to cease and desist a violating activity, or to abate a violating activity shall remain in effect until rescinded by a PEB or judicial decision.

(d) Any request for a PEB hearing shall be submitted in writing to the Administrator and shall state:

- (1) The reasons for the appeal hearing request, specifically identifying any claimed errors in the challenged decision or action;
- (2) Conclusions under PBMI, California, or Federal law, or in the application of such laws;
- (3) Any factual findings or statements of facts;
- (4) Any arbitrary or capricious action; and
- (5) Any way in which the person requesting a hearing has been or will be substantially prejudiced by the challenged decision or action.

(e) A written request for a PEB hearing pursuant to paragraph (a) or (b) must be received by the Administrator within thirty (30) calendar days from the notification date of the Administrator's action or decision.

(f) The Administrator shall notify all PEB members of a written request for a PEB hearing and forward the complete written request to all PEB members within two business days of receiving the request.

### 12002. Environmental Board Hearings

(a) Where a Pala Environmental Board hearing has been requested pursuant to paragraph 11003(a)(6) or 12001, the PEB shall provide written notice to all parties of the request, and shall provide written notice of the scheduling of a hearing date and location at least fourteen (14) calendar days in advance. The hearing shall be held within thirty (30) calendar days of the date on which the written request for a hearing was received by the PEB.

(b) The PEB may approve reasonable requests to reschedule a PEB hearing so long as no party will be unduly disadvantaged or irreparably harmed by the alternative hearing date, and may waive the fourteen (14) calendar days of advance notice for a hearing required by paragraph (a) if all parties agree to the waiver of notice.

(c) Unless otherwise agreed to by all parties, the PEB hearing shall be conducted during regular business hours.

(d) A party to a PEB hearing may submit a written request that the full PEB hearing be recorded no later than 7 days prior to the hearing. If approved, the hearing shall be recorded and distributed in a manner to be approved by the PEB which will not prejudice either party in any subsequent judicial review.

(e) Each party to a PEB hearing shall submit the following to the PEB and all other parties, at least seven (7) days prior to the hearing date:

- (1) A copy of each document, photograph, video recording, audio recording, and dataset that will be presented by the party as evidence during the hearing;
- (2) A description and, if deemed necessary by the PUB, photographs or video recordings of each piece of physical evidence that will be presented by the party during the hearing;
- (3) A list of all of the evidence to be presented under subparagraphs (1) and (2); and
- (4) A list of all witnesses that will be called by the party during the hearing including names, titles, and contact information.

(f) All PEB hearings shall proceed in the following manner. In an enforcement action, the Administrator is the petitioner.

- (1) The petitioner shall make a brief opening statement.
- (2) The opposing party shall make a brief opening statement.
- (3) The petitioner shall present each piece of evidence and call each witness for which prior notification was provided in accordance with paragraph (e).
- (4) Following the presentation of each piece of evidence and the calling of each witness by the petitioner, the opposing party shall have an opportunity to refute the evidence or cross-examine the witness.
- (5) The opposing party shall present each piece of evidence and call each witness for which prior notification was provided in accordance with paragraph (e).
- (6) Following the presentation of each piece of evidence and the calling of each witness by the opposing party, the petitioner shall have an opportunity to refute the evidence or cross-examine the witness.
- (7) PEB members may ask questions of the petitioner, the opposing party, and any witnesses regarding any of the evidence or testimony presented.
- (8) The PEB may request the submission and presentation of additional, relevant evidence by the petitioner or opposing party.
- (9) The PEB may call one or more of the following persons to answer questions and provide statements regarding the matter being considered by the PEB:
  - (A) Witnesses;
  - (B) Tribal government staff;
  - (C) Persons with delegated authority under the Environmental Ordinance; or
  - (D) Other members of the public, as determined necessary by the PEB.
- (10) The petitioner shall make brief closing remarks.
- (11) The opposing party shall make brief closing remarks.
- (12) The PEB will close the evidentiary portion of the hearing to privately deliberate the matter.

(g) The PEB will provide its decision and findings in writing signed by a majority of PEB members that were eligible to decide the case. Copies of the PEB's decision shall be provided to all parties, and shall be available for public inspection and copying at reproduction cost. The decision shall be issued within thirty (30) calendar days of the last day of the hearing.

**12003. Appeals of Environmental Board Decisions**

(a) Any person aggrieved by a decision of the Pala Environmental Board may appeal that decision to the Tribal Court within thirty (30) calendar days from the date that the person received written notification of the decision.

(b) An appeal of a PEB decision to the Tribal Court must be filed with the Tribal Court Clerk.

**12004. Judicial Review**

(a) The Tribal Court shall have jurisdiction to hear appeals of all cases and controversies arising under the provisions of the Pala Environmental Ordinance.

(b) The Tribal Judge shall review any appeal before the Tribal Court on the record that was before the PEB and shall not hear new evidence.

(c) Any person aggrieved under the Pala Environmental Ordinance must exhaust any and all administrative remedies before seeking judicial review in Tribal Court.

(d) The Tribal Court may, at the Court's discretion, remand a case to the PEB for reconsideration of a matter in a manner that is consistent with the Court's findings.

**12005. Fees**

(a) Any person requesting administrative review pursuant to this Article may be assessed applicable filing fees. Regulations may be adopted that establish administrative review filing fees.

(b) Any person requesting judicial review pursuant to this Article shall be assessed applicable filing fees under the Rules of Court.