

**PALA BAND OF MISSION INDIANS  
TRIBAL HEMP PLAN**

4/23/20

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## **CHAPTER 1. TRIBAL POLICY**

### **Section 1 Findings and Purpose.**

- (a) In 2018, the U.S. Congress enacted the 2018 Farm Bill (“Act”) that allows for the controlled cultivation of hemp in accordance with the Act, and a State or Tribal plan approved by the Secretary of Agriculture.
- (b) The Pala Band of Mission Indians (“Pala” or “Tribe”) has decided to open specific lands within its jurisdiction to the cultivation, processing, and distribution of hemp by enacting this Tribal Plan.
- (c) This Plan shall govern the cultivation, processing, and distribution of hemp on the Reservation, will be the basis of the “tribal plan” described in the Farm Bill, and will provide an additional source of revenue for tribal operations to provide funding for its members and the community.
- (d) Tribal regulation of the possession, cultivation, processing and distribution of hemp on the Reservation is necessary to protect the health, security, and general welfare of the Tribal community. In order to further these goals, the Tribe has adopted this Plan, which shall be liberally construed to fulfill the purposes for which it has been adopted.
- (e) Nothing in this Plan shall be deemed to be in conflict with the federal Controlled Substances Act.
- (f) The regulations and penalties imposed by this Plan extend to any person within the Pala reservation and other Tribal trust lands.

### **Section 2 Sovereign Immunity.**

Nothing in this Plan shall be construed to limit the jurisdiction of the Tribe, the Tribal Court, or tribal law enforcement personnel, and nothing herein shall limit or constitute a waiver of the sovereign immunity of the Tribe or its officers, instrumentalities, employees, elected officials, and agents, or authorize any form of a prospective waiver of such sovereign immunity.

### **Section 3 Exemption from Prosecution for Certain Acts.**

No employee of a hemp business shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, possession, production, or distribution of hemp when acting in accordance with this Plan and federal law.

### **Section 4 Effective Date.**

This Plan shall be effective upon the enactment by the Pala General Council and approval of the United States Department of Agriculture.

## **CHAPTER 2. DEFINITIONS**

### **Section 2-1 Definitions.**

Within this Plan, the following definitions apply:

- (a) “Acceptable hemp THC level” is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution range that includes 0.3% or less.
- (b) “Act” means the 2018 Farm Bill, P.L. 115-334 (2018).
- (c) “Applicant” means a person, or a person who is authorized to sign for a business entity, who submits an application for a license or permit.
- (d) “CBD” means cannabidiol.
- (e) “Certified seed” means seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of a tribe, United States, or state to officially certify seed, and that has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified.
- (f) “DEA” means the United States Drug Enforcement Administration.
- (g) “Decarboxylated” means the completion of the chemical reaction that converts THC-acid into delta-9-THC. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.
- (h) “Delta-9-THC” or “THC.” Delta-9-THC is the primary psychoactive component of cannabis. For the purposes of this plan, delta-9-THC and THC are interchangeable.
- (i) “Executive Committee” means the duly elected governing body of the Pala Band of Mission Indians.
- (j) “Financial Interest” is a person or entity that has more than a five (5) percent interest, share, or ownership in an operation(s).
- (k) "GPS" means Global Positioning System.
- (l) “Handling” means possessing or storing industrial hemp for any period of time on premises owned, operated, or controlled by a person licensed to cultivate or process industrial hemp. "Handling" also includes possessing or storing industrial hemp in a vehicle for any period of time other than during its actual transport from the premises of a licensed person to cultivate or process industrial hemp to the premises of another licensed person.
- (m) “HCO” shall mean the Tribe’s Hemp Control Officer as established by this Plan. The term may include employees, agents, and designees of the HCO.
- (n) “Hemp” means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

- (o) “Hemp business” means a growing facility, cultivating facility, processing facility, distribution facility, or any combination thereof.
- (p) “Industrial hemp products” means products derived from, or made by, processing industrial hemp plants or plant parts.
- (q) “Law enforcement agency” means the Pala Tribal Law Enforcement, DEA, or other federal or California law enforcement agency or drug suppression unit.
- (r) “License” means a valid license issued by the Tribe to grow, handle, or process hemp.
- (s) “Licensee” means a person authorized by the HCO to grow, handle, or process hemp under the terms established by this Plan.
- (t) “License agreement” means an agreement between the Tribe and a Licensee that regulates the conduct of that licensee.
- (u) “Location” or “Land” means the particular land, building, or buildings where hemp will be grown, handled, or processed, which can include a field name or building name.
- (v) “Location ID” means the unique identifier established by the applicant for each unique set of GPS coordinates where hemp will be grown, handled, or processed, which can include a legal description, field name, or building name.
- (w) “Nonviable seed” means a seed that has been crushed, dehulled, or otherwise rendered to have a zero percent germination rate.
- (y) “Permit” means a Tribal authorization to a licensed grower to plant, grow, or process hemp, or any part of or related products of hemp in a specifically described location.
- (z) “Person” means a human being, or a business entity created by law and given certain rights and duties of a human being.
- (aa) “Pesticide” means any substance or mixture of substances intended to:
  - (1) Prevent, destroy, control, repel, attract, or mitigate any pest;
  - (2) Be used as a plant regulator, defoliant, or desiccant; or
  - (3) Be used as a spray adjuvant, once they have been mixed with a U.S. Environmental Protection Agency registered product.
- (bb) "Plot" means a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of hemp throughout the area.
- (cc) “Ppm” means parts per million.
- (dd)
- (ee) “Pre-harvest sample” means a composite, representative portion from plants in a hemp plot collected in accordance with the procedures as established by this Plan.

- (ff) “Prohibited variety” means a variety or strain of cannabis excluded by this Plan.
- (gg) “Processing” means the harvesting of the plant cannabis or the use of any process or equipment, including, but not limited to, dehydrators or humidifiers that may be necessary to convert raw hemp plants or plant parts into a consumable product.
- (hh) “Processor” or “Processor Facility” means a commercial entity that purchases hemp from a grower and that extracts resin from the hemp or creates a hemp-infused product for sale and transfer in packaged form.
- (ii) “Program” means the Pala Hemp Program.
- (jj) “Propagule” means a plant or plant part that can be utilized to grow a new plant.
- (kk) “Publicly marketable hemp product” means a hemp product that meets one (1) or more of the following descriptions:
- (1) The product does not include any living hemp plants, viable seeds, leaf materials, floral materials, or delta-9-THC content above zero and three-tenths (0.3) percent, and does include, without limitation, the following products: bare stalks, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils, and plant extracts (excluding products containing delta-9-THC above zero and three-tenths (0.3) percent).
  - (2) The product is CBD that was derived from hemp as defined by this Plan.
- (ll) “Regulations” means the official regulations, policies, and procedures related to the enforcement of this Plan, adopted by the Executive Committee. The Regulations may also be referred to in this Plan as the “Hemp Regulations”.
- (mm) “Reservation” means the reservation and tribal trust lands of the Pala Band of Mission Indians.
- (nn) “Tribal” or “Tribe” means the Pala Band of Mission Indians.
- (oo) “Tribal Court” means the courts of the Pala Band of Mission Indians.
- (pp) “Tribal Police” or “Tribal Law Enforcement” shall mean the Pala Band of Mission Indians Tribal Police.
- (qq) “Variety” means a subdivision of a species that is:
- (1) Uniform, in the sense that the variations in essential and distinctive characteristics are describable;
  - (2) Stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity if reproduced or reconstituted as required by the different categories of varieties; and
  - (3) Distinct, in the sense that the variety can be differentiated by one (1) or more identifiable morphological, physiological, other characteristics from all other

publicly known varieties, or other characteristics from all other publicly known varieties.

(qq) “Variety of concern” means any variety of hemp that tests above 3,000 ppm or 0.3000 percent (0.3%) delta-9-THC in one (1) or more pre-harvest samples. A hemp variety designated as a "variety of concern" could be subject to restrictions and additional testing.

(ss) “Volunteer cannabis plant” means any cannabis plant that grows of its own accord from seeds or roots in the years following an intentionally planted cannabis crop and is not intentionally planted.

## **CHAPTER 3. REGULATION OF HEMP**

### **Section 3-1. Exemption from Prosecution for Certain Acts.**

No official, officer, employee, or agent of the Tribe or a hemp business shall be subject to prosecution or civil penalty in the Tribal Court for the cultivation, production, or distribution of hemp in accordance with this Plan and federal law.

### **Section 3-2. Hemp Regulations.**

The Tribe certifies that it has the resources and personnel to carry out its hemp regulations. Policies and procedures related to the regulation of hemp by the Tribe shall further the purposes of this Plan and shall be approved by the Executive Committee. This Plan and any Hemp Regulations may set forth, at a minimum, the following provisions to regulate:

- (a) Licensing of applicants;
- (b) Permitting locations where hemp is authorized;
- (c) Reporting and recordkeeping;
- (d) Procedures for hemp sampling, THC testing, and disposal actions;
- (e) Pesticide use;
- (f) Prohibited products or activities;
- (g) Penalties; and
- (h) Remedies.

## **CHAPTER 4. HEMP CONTROL OFFICER**

### **Section 4-1. Position Establishment.**

The Tribe hereby establishes the “Hemp Control Officer” as an instrumentality of the Tribe and will hereafter be referred to as “the HCO.” The HCO is under the directive of the Executive Committee, and may fulfill any and all obligations of the Executive Committee under this Plan.



In carrying out its purposes under this Plan, the HCO shall function as an arm of the Tribe.

**Section 4-2. Qualifications.**

- (a) The HCO shall be one person appointed by the Executive Committee and must not have:
  - (1) any felony convictions in any tribal, state, or federal jurisdictions; and
  - (2) any misdemeanor convictions for moral turpitude in the last ten (10) years in any tribal, state, or federal jurisdictions; and
    - (A) The Executive Committee may waive (a)(2) above based upon the time and totality of the circumstances.
  - (3) a financial interest in any hemp operation.
- (b) The following persons are ineligible to serve as HCO: employees of any hemp operation, hemp contractors (including any principal of a management or other contracting company).

**Section 4-3. At-Will Employee.**

The HCO is an at-will employee and can leave his/her employment or be removed by the Tribe.

**Section 4-4. Vacancies.**

The Executive Committee shall appoint an HCO when the position becomes vacant.

**Section 4-5. Training, Equipment; Staff.**

The Tribe will provide the HCO with adequate training, equipment, staff and compensation to fully carry out its duties.

**Section 4-6 Powers and Duties.**

The HCO shall have the power and responsibility to enforce the provisions of this Plan any Tribal Hemp Regulations. These shall include:

- (a) Issuing licenses, consistent with a suitability determination.
- (b) Recommending permit approval for sites or locations for hemp production.
- (c) Assessing and evaluating the potential environmental impacts of a hemp business' proposed operations.
- (d) Conducting annual and/or random inspections, examinations and monitoring all hemp and hemp-related operations to verify that hemp is being produced in compliance with this plan. This includes site visits, and inspecting and copying relevant records.
- (e) Ensuring compliance with all applicable Tribal and federal laws, rules and

regulations regarding hemp. This includes investigating any suspicion of wrongdoing associated with any hemp activities and reporting any potential criminal violations to law enforcement.

- (f) Receive reports and/or monitor the disposal of all hemp crops that are to be disposed of pursuant to the provisions of this Plan or federal law.
- (g) Complying with reporting and recordkeeping requirements.
- (h) Providing written notice of licensing decisions to applicants and licensees.
- (i) Imposing and collecting necessary relevant fees and/or penalties.
- (j) Adopting departmental procedures to support the enforcement of this Plan and the Hemp Regulations.

#### **Section 4-7. Limitation of HCO Powers.**

The HCO shall not regulate the Tribe or any entities except with respect to the activities of cultivating, processing, and storing hemp.

#### **Section 4-8. Compensation of the HCO.**

The HCO shall be paid an equal amount out of the HCO's operating budget at the rate set by the Executive Committee. If no action is taken by the Executive Committee, the compensation for the HCO shall remain the same as the previous year.

#### **Section 4-9. Sovereign Immunity of HCO.**

When acting under the color of his/her authority, the HCO shall enjoy all of the privileges and immunities of the Tribe, including sovereign immunity from suit in the state, federal, or tribal court.

- (a) The HCO shall have no authority to waive the sovereign immunity of the Tribe, or any other Tribal entity.
- (b) Nothing in this Plan shall be deemed or construed to be a waiver of the Tribe's or the HCO's sovereign immunity from suit.
- (c) Nothing in this Plan shall be deemed or construed as consent of the HCO to the jurisdiction of the United States, any state, or any other Tribe with regard to the business or affairs of the HCO.
- (d) Notwithstanding any other provision herein, as an entity of the Tribe, the HCO's immunity from suit shall at all times be deemed waived for actions against the HCO initiated by the Tribal Executive Committee on behalf of the Tribe.

## **CHAPTER 5. LICENSING APPLICATIONS**

#### **Section 5-1. License Required to Grow or Process Hemp.**

Any person who wishes to grow, process, handle, or transport hemp within the Tribe's

jurisdiction, must possess a valid license to do so.

### **Section 5-2. Licenses to be Issued and Regulated by the Tribe.**

The Executive Committee shall determine the appropriate number of hemp businesses. The Tribe or its designee shall adopt a uniform licensing application for approval or denial of licenses. The HCO retains the discretion to issue or deny licenses in accordance with this Plan and any Hemp Regulations.

### **Section 5-3. Waiting Period.**

A person who has had a license terminated shall not be eligible to reapply to the program for a period of five (5) years from the date of termination.

### **Section 5-4. Background checks.**

- (a) Applicants for a license must submit a criminal history report as part of an application for licensing. The Tribe may require other background checks. When a business applies for a license, the owners, directors, and managers must each submit to relevant background checks. Such reports must be completed not more than 60 days before the submission of a license application to the HCO.
- (b) A person may not have any felony convictions in any tribal, state, or federal jurisdictions in accordance with section 15-1(a)(1); or
- (c) Any misdemeanor convictions for moral turpitude in the last ten (10) years in any tribal, state, or federal jurisdictions.
  - (1) The Executive Committee may waive the above subsection (c) prohibition based upon the time and totality of the circumstances.

### **Section 5-5. Fees.**

The Tribe may collect fees that are reasonable to the processing of license applications. Failure to pay the fees will result in the denial of an application.

### **Section 5-6. Application Contents.**

Applications shall include at a minimum:

- a. Full name, residential address, telephone number, and email address.
- b. If the applicant represents a business entity, the full name of the business, the principal business location address, the full name of the applicant who will have signing authority on behalf of the entity, and email address.
- c. Street address, location ID, and the GPS coordinates for each field, greenhouse, building, or site where hemp will be grown, handled, or processed.
- d. Information regarding whether the entity/person is licensed in any other jurisdiction.

- e. Proof of Insurance that includes worker's compensation insurance, automobile, and general liability insurance.
- f. A business and operations plan shall be included with the application that includes at a minimal the following:
  - 1. The proposed acreage or greenhouse or indoor square footage to be planted or used for processing.
  - 2. A description of the type of facility proposed and the anticipated or actual number of employees. The name of the proposed Manager of the Facility.
  - 3. A security plan which shall include a general description of the security systems(s) and lighting plan showing the outside lighting, and current centrally alarmed and monitored security system service agreements.
  - 4. A list of pesticides, fertilizers, and other chemicals proposed for use.
  - 5. A description and plan of all equipment and methods that will be employed to stop any impact to adjacent uses, including assurances that no odor will be detected from outside the Location.
  - 6. A plan for the disposal of hemp and related byproducts.
  - 7. A statement of previous farming experience.
  - 8. Planned source of seeds or propagules.
- g. The applicant's criminal history report.
- h. Any License Application that is missing required information shall be subject to denial.
- i. The HCO shall notify applicants by letter or email whether the application has been denied or conditionally approved.
- j. The HCO shall then issue a license with that person's photo.

## **CHAPTER 6. LICENSE AGREEMENTS**

### **Section 6-1. License Agreement Required.**

An applicant shall not be licensed until their application is approved and the applicant and the HCO have executed a license agreement.

### **Section 6-2. License Agreement Contents.**

Any License Agreement shall contain at a minimum:

- (a) The agreement shall have a consent to entry onto, and inspection, sampling, and testing of all hemp plants, materials, lands, and structures used for hemp production by the HCO, representatives of the HCO and law enforcement agencies, with or without cause, with

or without advance notice.

- (b) The applicant agrees to forfeiture and disposal, without compensation, of:
  - (1) Material found to have a tested greater than the acceptable hemp THC level on a dry weight basis.
  - (2) Plants located in an area that is not licensed by the Tribe.
  - (3) Plants not accounted for in required reporting to the HCO.
- (c) The applicant agrees to provide to the HCO all growing, processing, handling, and storage locations, GPS coordinates, and receive approval for those locations prior to having hemp on those premises.
- (d) The applicant acknowledges that licensed growers or processors/handlers shall submit a Site Modification Request Form, and obtain prior written approval from the HCO before implementing any change to the licensed sites stated in the grower licensing agreement.
- (e) Acknowledgement by the applicant that hemp shall not be grown, processed, or handled in any location other than the location listed in the grower licensing agreement.
- (f) Agreement by the applicant not to interplant hemp with any other crop without express written permission from the HCO.
- (g) Acknowledgement by the applicant that anyone applying pesticides to hemp shall first obtain written approval from the Tribe to apply such pesticides, hold a pesticide license and apply pesticides in accordance with regulations or the agreement.
- (h) Acknowledgement by the applicant that the applicant shall comply with restrictions established by the Tribe limiting the movement of hemp plants and plant parts.
- (i) Acknowledge that the risk of financial or other loss shall be borne solely by the licensed grower.
- (j) Agreement that any time hemp is in transit, a copy of the grower and/or processor licensing agreement shall be available for inspection upon the request of a representative of the HCO or a law enforcement agency.
- (k) Agreement that, upon request from a representative of the HCO or a law enforcement agency, a licensed grower and/or processor shall immediately produce a copy of his or her grower licensing agreement for inspection.
- (l) Agreement to submit Planting, Harvest, Disposal, and other reports required by the HCO to which the grower and/or processor has agreed, on or before the deadlines established in this Plan.
- (m) Agreement to monitor unregistered fields for volunteer cannabis plants and to dispose of those volunteer cannabis plants for three (3) years past the last date of planting reported to the HCO.
- (n) Agreement not to employ or rent land to cultivate hemp from any person who was

terminated or denied a license.

- (o) Agreement to notify the HCO of any interaction with law enforcement immediately by email.
- (p) Agreement to notify the HCO of any theft of hemp, whether growing or not.
- (q) Agreement to pay all fees imposed by the Tribe.
- (r) Failure to agree or comply with terms and conditions established in the grower licensing and/or processor agreement shall constitute grounds for appropriate HCO or Executive Committee action, up to and including termination of the grower licensing agreement and expulsion from the Tribe's hemp program.
- (s) Failure to agree and sign the grower licensing and/or processor agreement shall terminate conditional approval and a licensing agreement shall not be executed.
- (t) The signatures of the Tribe and licensee(s).

### **Section 6-3. Licensing Fees.**

- (a) Every hemp business shall pay \$5,000 license application fee to the Tribe.
- (b) The annual renewal fee shall be \$2,500.
- (c) All operating fees shall be remitted to the Tribe, which shall keep accurate records of all such receipts, and shall be subject to distribution by the Tribe in accordance with its usual appropriation procedures for governmental and social services.
- (d) Non-payment of fees after 10 days shall be considered a violation of the license agreement, and can result in suspension or revocation of their license

## **CHAPTER 7. SITE PERMITS**

### **Section 7-1. Permits Required.**

A permit is required for each location or site that hemp is planted, grown, handled, or processed.

### **Section 7-2. Permits to be Issued and Regulated by the Tribe.**

The Tribe or its designee shall adopt a uniform permitting application and process for approval or denial of permits. The HCO retains the discretion to issue or deny permits in accordance with the Hemp Regulations.

### **Section 7-3. License Required.**

Permits may only be issued to individuals and entities with a license.

### **Section 7-4. Prohibited Locations.**

Permits may not be issued for the following sites or locations:

- (a) Any place that is not listed in the grower licensing agreement.
- (b) Within 1,000 feet of any structure that is used for residential purposes.
- (c) Within 1,000 feet of a school, church/place of worship, or a public recreational area.
- (d) On property owned by, leased from, or previously submitted in a license application by any person who is ineligible or was terminated, or denied a license.
- (e) A licensed grower shall not plant hemp plants in an outdoor growing location of less than one-quarter acre unless prior approval is received in writing from the HCO.

#### **Section 7-5. Co-Locating Permitted.**

Permits may be issued to licensed growers and licensed processors to co-locate at the same location.

#### **Section 7-6. Site Modifications.**

A licensed grower who elects to grow or process hemp in a new location or handle at a site other than the sites specified by the location description and GPS coordinates listed in the grower and/or processor licensing agreement shall submit a Site Modification Request Form, and obtain written approval from a representative of the HCO, prior to planting, processing or storing at the proposed location.

#### **Section 7-7. Site Access.**

No person shall have an expectation of privacy with respect to any location or site that is permitted under this Plan. Licensees, whether present or not, shall allow representatives of the HCO and tribal and/or federal law enforcement agencies to enter the premises with or without cause and with or without advanced notice.

#### **Section 7-8. Fees.**

The Tribe may institute annual fees that are in accordance with the value of the permitted land area. Non-payment of fees shall result in an application for a permit to be denied or revoked. This section shall not apply to Tribally-owned hemp operations.

## **CHAPTER 8. REPORTING AND RECORDKEEPING**

#### **Section 8-1. Reporting Requirements of HCO.**

At a minimum, the HCO must report and maintain records on the following information:

- (a) Retain Information about Growing Locations. The location and its GPS coordinates for every site or location where the Tribe has approved hemp to be grown.
- (b) Information about approved growing, processing, handling, and storage site locations and make available upon request to Tribal Law Enforcement, the DEA, and other law enforcement agencies whose representatives request registered site information, including the location and its GPS coordinates.

- (c) All applications for licensure, grants or denials of licenses, receipts of fees, distribution of fees and revenues to the Tribe.
- (d) A quarterly report to the Executive Committee summarizing the HCO's official actions, activities, investigative reports, and reports received from any hemp business as it deems necessary to keep the Executive Committee fully informed as to the status of the HCO's activities.

**Section 8-2. HCO to Submit Growing locations and Grower License Information to United States Secretary of Agriculture and Farm Service Agency.**

The HCO shall provide a report by the first of each month to the Secretary of Agriculture and the Farm Service Agency real-time information for each grower, including:

- (a) The licensed grower's legal and common name;
- (b) The licensed grower's and each employee for whom a business entity is required to submit a criminal history report Tribal license number, telephone number, email address, physical and mailing address, and, if a business, that company's EIN number;
- (c) The legal description, and to the extent practicable, the geospatial location for each field, facility (greenhouse/building), or other place where hemp is licensed to be grown;
- (d) The status of license numbers and licensed growers, including any changes regarding a licensed grower;
- (e) The amount of acres planted for the calendar year; and
- (f) The total annual crop acreage planted, harvested, and, if applicable, disposed to be filed by December 15<sup>th</sup> of each year.

**Section 8-3. Harvesting/Disposal Reports.**

- (a) Testing grower reports and the current Harvest/Disposal Report form shall be submitted to the HCO at least fifteen (15) days prior to the intended harvest date or intended disposal of a failed crop.
- (b) The HCO shall submit the disposal report to the USDA by the first of the month, including the name and contact information for each producer who produced non-conforming plants, as well as the date the disposal was completed.

**Section 8-4. Planting Reports.**

A licensed grower shall submit to the HCO a complete and current Field Planting Report, within fifteen (15) days after every planting, including replanting, of seeds or propagules in an outdoor location. Each Field Planting Report shall identify the:



- (a) Correct hemp variety name as designated upon approval of the planting request or as approved by the HCO.
- (b) Field and/or Greenhouse location ID as listed in the grower licensing agreement.
- (c) Primary intended use of the harvest for each planting.
- (d) The amount of acres harvested.
- (e) A licensed grower who does not plant hemp in an approved outdoor site listed in the grower license agreement shall submit a Field Planting Report, on or before July 31, stating that hemp has not and shall not be planted at that site.
- (f) In addition to the initial Greenhouse/Indoor Planting Report, a licensed grower with an approved greenhouse or indoor growing site shall submit quarterly reports for each location ID to the HCO, such Reports shall be due no later than March 31, June 30, September 30, and December 31.

**Section 8-5. Recordkeeping.**

All forms, reports, and records required to be submitted to the Tribe by this Plan and by the Hemp Regulations shall be kept for a minimum of three (3) calendar years. Licensees and the HCO are each responsible for maintaining such records.

**CHAPTER 9. SEED ACQUISITION**

**Section 9-1. Seed Acquisition Within the United States.**

- (a) A person shall not acquire seeds or propagules from a source within the United States unless the seeds are on a state and/or federally approved seed cultivars list and a request form is provided to the HCO with the seed and/or propagule on the current list. HCO approval is not required for such seeds or propagules.
- (b) Other international seeds require that a completed Domestic Seed/Propagule Request form be submitted to the HCO and obtaining written approval of the Domestic Seed/Propagule Request from a representative of the HCO.

**Section 9-2. Seed Acquisition from a Source Outside of the United States.**

- (a) A person seeking to obtain seeds from an international source shall submit a complete International Seed Request form to the HCO.
- (b) If approved, the HCO shall request a USDA or DEA Permit to Import under the Commission's DEA registration.
- (c) A person shall not acquire seeds from a source outside the United States, unless the HCO first obtains a Permit to Import from the USDA or DEA or such seeds are on a federally approved list.

**Section 9-3. Seeds of Wild, Landrace, or Unknown Origin.**

- (a) A person shall not acquire or grow hemp seeds or propagules of wild, landrace,

or unknown origin without first obtaining written approval from the HCO.

- (b) The HCO shall not permit hemp seeds or propagules of wild, landrace, or unknown origin to be planted, cultivated, or replicated by any person without the HCO monitoring the replication and THC testing of mature plants grown from the seeds or propagules by the HCO or its designee.
- (c) Any licensed grower or licensed processor found to have saved seed, propagules, or cuttings, or cultivated seeds, propagules, or cuttings from a cannabis plant of wild, landrace, or unknown origin, without advance written permission from the HCO shall be subject to suspension or revocation of his or her license and forfeiture without compensation of his or her materials.

## **CHAPTER 10. HARVESTING**

### **Section 10-1. Grower Responsibilities.**

Growers shall:

- (a) Submit a complete and current Harvest/Disposal Report form to the HCO at least fifteen (15) days prior to the intended harvest date or intended disposal of a failed crop prior to harvest of hemp.
- (b) Collect samples of any hemp plants prior to harvest at any time. The grower or an authorized representative shall be present at the growing site for the sample collection.
- (c) The samples, including flower material shall be collected in accordance with the USDA's Hemp Sampling Guidelines.
- (d) The method used for sampling must ensure that a representative sample is a homogeneous composition of the plot.
- (e) Representatives of the HCO shall be provided with complete and unrestricted access to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp plants, and all locations listed in the grower licensing agreement.
- (f) The licensed grower shall harvest the crop within fifteen (15) days following the date of the final pre-harvest sample collection and THC testing, but not before the samples are taken, tested, and determined by the testing lab to be acceptable hemp.
- (g) Samples of hemp plant materials from one lot shall not be commingled with hemp plant materials from other lots .

### **Section 10-2. Pre-Harvest Sampling Process and Equipment.**

The sampling process and equipment shall be in accordance with the USDA's Hemp Sampling Guidelines.

### **Section 10-3. Pre-Harvest Retest.**

A licensee may order a pre-harvest THC retesting of a plot if the results of an initial THC test on the pre-harvest sample indicate a delta-9-THC concentration in the pre-harvest sample in excess of 0.3% THC. A licensed grower shall pay any retest fees.

## **CHAPTER 11. THC TESTING**

### **Section 11-1. Testing Procedures.**

- (a) Testing must be according to a post-decarboxylation or other similar reliable method for delta-9 tetrahydrocannabinol hemp concentrations. The testing methodology must consider the potential conversion of delta-9 THCA into THC and the test result measure total available THC (THC + THCA). Testing methodologies include but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.
- (b) The Testing Lab must evaluate, estimate, and report the measurement of uncertainty with the test results.
- (c) Testing shall be performed by a state or federally approved testing lab and in accordance with the USDA's Hemp Testing Guidelines, including section 990.25. The Testing Lab and Licensee shall report the results to the USDA and HCO in accordance with section 990.70(d).
- (d) Lots tested and not certified by a DEA-registered testing laboratory at or below the acceptable hemp THC level may not be handled, processed or enter the stream of commerce and the grower shall lawfully dispose of the lot's crop.
- (e) Test results for noncompliant plants must be reported to the USDA and HCO.
- (f) The Tribe reserves the right to test any hemp plants produced by any Licensee for THC compliance.

## **CHAPTER 12. CROP DISPOSAL**

### **Section 12-1. Surrender and Disposal of Prohibited Varieties.**

When varieties are determined to be a greater than 0.3% THC, the Licensee shall contact a person authorized under the Controlled Substance Act to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized federal, state, tribal, or local law enforcement officer to dispose of the crop. Licensee shall provide a copy of such disposal action within 10 days of the disposal.

### **Section 12-2. Licensees Required to Submit Crops Disposal Report.**

A grower whose hemp crop must be disposed of under this Plan shall submit to the HCO a Crops Disposal Report at least 15 days prior to the proposed crop disposal. The Report shall contain the following information:

- (a) The Location ID of the hemp plot to be disposed of;

- (b) The variety/strain of the hemp crop;
- (c) The date of the proposed disposal;
- (d) The proposed method of disposal;
- (e) Whether the disposal will be a complete disposal of all hemp in the plot;
- (f) Photos of the hemp plot proposed for disposal;
- (g) License number of the licensee; and
- (h) Signature of the licensee.

**Section 12-3. Expense of Crop Disposal.**

The Licensee shall be responsible for the cost of crop disposal.

**Section 12-4. Penalty for Failing to Submit Crops Disposal Report.**

Any Licensee that fails to submit a disposal report shall have their license revoked, may be banned from holding a hemp license in the future, and shall be subject to a civil penalty of up to \$2,500.

**CHAPTER 13. PROHIBITED ACTIVITIES**

**Section 13-1. Growing or Processing Prohibited Varieties of Hemp Prohibited.**

No person may grow, cultivate, handle, or process hemp that does not meet applicable federal and Tribal standards at any location within the Tribe's jurisdiction.

**Section 13-2. Restrictions on Sale or Transfer.**

Licensees shall not plant, handle, process, or sell any cannabis that is not hemp.

**Section 13-3. Operating Without a License Prohibited.**

A person shall not grow, cultivate, handle, or process hemp without a valid Tribal license and/or license agreement.

**Section 13-4. Intermingling Hemp With Other Crops.**

Hemp shall be physically segregated from other crops unless prior approval is obtained in writing from the HCO.

**Section 13-5. Operating Minimum.**

A licensed grower shall not plant hemp plants in an outdoor growing location of less than one-quarter acre unless prior approval is received in writing from the HCO.

**Section 13-6. Public Access to Hemp Restricted.**

The public may not access hemp plots for activities such as a maze. Licensees shall not allow the unsupervised public on permitted sites.

## **CHAPTER 14. NEGLIGENCE VIOLATIONS**

### **Section 14-1. Negligent Violations.**

(a) A person may be subject to a negligent violation for:

- (1) Failure to provide a location identification of the grow area;
- (2) Failure to obtain a license; or
- (3) Production of hemp that exceeds the acceptable hemp THC level.

(b) A person does not commit a negligent violation if they produce plants that exceed acceptable hemp THC levels and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5% on a dry weight basis.

### **Section 14-2. Corrective Action Plans for Negligent Violations.**

(a) A person who is found by the HCO to have grown hemp that tested in excess of 0.3% THC shall be subject to a corrective action plan. Corrective action plans issued by the HCO shall include, at a minimum, the following information:

- (1) A reasonable date by which the person shall correct his or her violation; and
- (2) A requirement for periodic reports from the person to the HCO about the person's compliance with the corrective action plan, applicable hemp statutes and administrative regulations for a period of at least two (2) years from the date of the corrective action plan.
- (3) Negligent violations of this plan are not subject to federal, state, tribal, or local government criminal enforcement action.
- (4) Three negligent violations within a five-year period shall render a grower ineligible to produce hemp for five years from the date of the third violation.
- (5) The Tribal HCO shall conduct inspections to determine if the corrective action plan has been implemented.

(b) A person does not commit a negligent violation if they produce plants that exceed acceptable hemp THC levels and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5% on a dry weight basis.

(c) Negligence for this Plan is defined as a failure to exercise the level of care that a reasonably prudent person would exercise in complying with this Plan and the federal hemp regulations.

(d) Violations made with a culpable mental state greater than negligence shall be reported to

the U.S. Attorney General and the chief law enforcement officer of the State and Tribe.

## **CHAPTER 15. FELONIES**

### **15-1. FELONIES**

- (a) A person with a Federal or State controlled substance felony conviction is restricted from participating in the plan and producing hemp for 10 years from the date of the conviction, unless such person was lawfully growing hemp:
  - (1) before December 20, 2018 under the 2014 Farm Bill and whose conviction also occurred before that date; or
  - (2) with a license, registration, or authorization under the 2014 Farm Bill pilot program.
- (b) For growers that are entities, the HCO shall evaluate the percentage of ownership, titles, and vested interests in the entity in accordance with section 5-4(a) for the purposes of 15(a).

## **CHAPTER 16. PENALTIES**

### **Section 16-1. Applicability.**

Anyone who violates this Plan, whether intentionally or negligently, is subject to any of the penalties set forth within.

### **Section 16-2. Immediate License Suspension.**

The HCO shall immediately suspend a license, without an opportunity for a hearing, if:

- (a) The licensee pleads guilty to, or is convicted of, any drug-related felony.
- (b) The licensee or their agent admits to having made any false statement to the HCO or its representative or failed to comply with any instruction or order from the HCO.

### **Section 16-3. License Suspension and Revocation.**

The HCO shall notify a licensee in writing that the grower and/or processor licensing agreement may be temporarily suspended or revoked if the HCO receives information supporting an allegation that a licensed grower has:

- (a) Violated a Regulation.
- (b) Made a false statement to the HCO or a law enforcement agency or materially falsifies any information in the application.
- (e) Been found to be growing or in possession of hemp greater than 0.3% THC. A person does not commit a negligent violation, however, if they produce plants that exceed acceptable hemp THC levels and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5% on a dry weight basis.

- (c) Failed to comply with an order from the HCO or applicable law enforcement agency.

#### **Section 16-4. Consequences of License Suspension.**

- (a) A person whose license has been temporarily suspended shall not harvest, process, or remove hemp from the premises where it is located at the time when the HCO issued its notice of temporary suspension, except as authorized in writing by the HCO.
- (b) As soon as possible after the notification of temporary suspension, the HCO shall inspect the licensee's site and perform an inventory of all hemp, and hemp products that are in the licensed grower's possession.

#### **Section 16-5. Termination of Licensing Agreement.**

The Tribe may unilaterally and immediately suspend and/or revoke licenses upon the HCO's finding that a licensed grower and/or processor has committed any of the acts greater than negligence in violation of this Plan or the Hemp Regulations, or violated any provision of an applicable licensing agreement.

#### **Section 16-6. Termination of Employment.**

Tribal employees, including the HCO, may be terminated for violating provisions of this Plan.

#### **Section 16-7. Civil Penalties.**

If the HCO receives information supporting a finding that it is more likely than not that a person has engaged in conduct violating a provision this Plan or the Tribe's hemp Regulations, or the licensing agreement, then the HCO may assess a monetary civil penalty not to exceed \$10,000 per violation.

#### **Section 16-8. Forfeiture.**

Any hemp within the Band's jurisdiction is subject to forfeiture and disposal without compensation if it is being commercially grown, processed, or handled without a license or at an unpermitted location.

#### **Section 16-9. Stacking of Penalties Allowed.**

If the HCO determines that an offense or offenses have been committed under this Plan, the HCO is permitted to stack various penalties.

#### **Section 16-10 Advisement of Rights.**

Any time the HCO issues a penalty under this Chapter, he or she shall provide a written notice of rights, including the right to a hearing, if applicable.

#### **Section 16-11. Mandatory Reporting.**

Any person who is found by the HCO to have violated any statute or administrative regulation governing that person's participation in the hemp program with a culpable mental state greater than negligence shall be reported to Tribal, State, and Federal Law Enforcement Agencies.

## **CHAPTER 17. APPEALS**

### **Section 17-1. Burden of Proof.**

Prior to issuing a penalty or an adverse decision, the HCO must base decisions by a preponderance of the evidence.

### **Section 17-2. Right to Review of Adverse Decisions.**

Any person who has been issued an adverse decision under this Plan or the Hemp Regulations may seek the HCO's review of such decision.

### **Section 17-3. Requesting a Review Hearing.**

A review hearing will not be conducted unless a written petition for review is provided to the HCO within ten (10) calendar days of service to the recipient of the written notice of the HCO's decision. The petition must state the bases that support the person's position. If no request is provided within 10 calendar days, the HCO's decision shall be deemed final.

### **Section 17-4. HCO Review Hearing.**

At the review hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, HCO shall issue a decision, subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the Tribe and its Tribal members. The decision of the HCO shall be provided in writing.

### **Section 17-5. Requesting a Tribal Court Review Hearing.**

A person may request the Tribal Court review the HCO's decision. Such request for review must be made within ten (10) calendar days of the HCO's decision. The petition must state the bases that support the person's position. If no request is provided within 10 calendar days, the HCO's decision shall be deemed final.

### **Section 17-6. Tribal Court Review Hearing.**

The Tribal Court shall schedule a hearing within 30 calendar days of receiving the request for hearing. The person and HCO shall submit any court briefs to the Court and the other party, including their evidence and witness list at least 10 calendar days prior to the hearing. At the Tribal Court hearing, the person and the HCO may provide evidence and testimony. Upon consideration of these, the Tribal Court shall issue a decision within 15 calendar days of the hearing. The Tribal Court shall issue a written decision. The Tribal Court decision shall be final and is not subject to further review.

### **Section 17-7. Legal Standard.**



The legal standard for review shall be clear and convincing.

## **CHAPTER 18. MISCELLANEOUS**

### **Section 18-1. Amendments.**

This Plan may be amended by the Executive Committee.

### **Section 18-2. Savings Clause.**

In the event that any phrase, provision, part, paragraph, subsection, or section of this Plan is found by a court of competent jurisdiction to violate the Constitution or laws of the Tribe or any federal law, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and be deleted from this Plan. The entirety of the balance of this Plan shall remain in full and binding force and effect.

## **LEGISLATIVE HISTORY**

This Plan was enacted by the Pala Band of Mission Indians general Council on February 12, 2020, by Resolution Number 20-01. This Plan was approved by the Secretary of the United States Department of Agriculture on \_\_\_\_\_, 2020.