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9 Attorneys for Plaintiff  
10 LOS COYOTES BAND OF CAHUILLA  
11 & CUPENO INDIANS

12 UNITED STATES DISTRICT COURT  
13  
14 SOUTHERN DISTRICT OF CALIFORNIA

15 ERTC, LLC, a Nevada limited liability ) Case No.: 11cv2148-WQH-NLS  
16 company )  
17 )  
18 Plaintiff, )  
19 vs. ) DEFENDANT’S OPPOSITION TO  
20 ) TEMPORARY RESTRAINING ORDER  
21 LOS COYOTES BAND OF CAHUILLA & )  
22 CUPENO INDIANS, a federally recognized )  
23 Native American Tribe, ) Date: September 20, 2011  
24 Defendant. ) Time: 9:30 a.m.  
25 ) Department: To be assigned  
26 )  
27 )  
28 )

29 Defendant makes a special appearance for the limited purpose of challenging this court’s  
30 jurisdiction and to challenge or quash service.

31 1. Defendant, the Los Coyotes Band of Cahuilla and Cupeno Indians (“Los Coyotes”  
32 or “Tribe”) is a federally recognized Indian Tribe whose Reservation is located in San Diego  
33 County California, and whose land is held in trust by the United States government by and  
34 through the Bureau of Indian Affairs.

35 ///  
36 ///

1           2.       The summons, complaint and moving papers for this ex parte hearing were not  
2 served upon the Tribe, its chairman or any of its elected counsel, but instead were served upon a  
3 contract tribal police officer at the law enforcement kiosk, which is not proper service.

4           3.       The undersigned counsel is the attorney for Los Coyotes and is appearing to  
5 challenge and quash service and is not making a general appearance.

6           4.       Plaintiff seeks to enjoin Defendant, a federally recognized Indian Tribe from  
7 enforcing its own laws, from regulating ingress and egress on its Reservation, and to force the  
8 tribe to allow non-members to enter the Reservation to discharge unpermitted weapons and to  
9 cross unfettered upon its land and to occupy a substantial portion of its Reservation.

10          5.       Plaintiff claims to have the right to access by virtue of a 25-year lease on tribal  
11 trust lands that was never approved by the Bureau of Indian Affairs as required under Federal  
12 law, including, but not limited to 25 USC Section 81 and 25 CFR 162.

13          6.       The unapproved lease contains what purports to be a waiver of sovereign  
14 immunity signed by the former Chairperson, but on its face does not evidence any approval by  
15 the Tribe's General Council, which is the Tribe's governing body, nor was it approved by the  
16 Los Coyotes Executive Council which is its elected officials. In fact the lease, drafted by  
17 Plaintiffs specifically contains a place for the Tribe to acknowledge by stamp or Resolution that  
18 it has approved the lease including the waiver of sovereign immunity.

19          7.       Under the Tribe's custom and tradition, the Chairperson or Spokesperson is not  
20 unilaterally authorized to waive the Tribe's sovereign immunity. That can only be done by a  
21 vote of the Tribe's General Council with the concurrence of its Executive Council.

22          8.       Notwithstanding the Tribe's governing principles the former Spokesperson signed  
23 an Ultra Vires document purporting not only to waive the Tribe's sovereign immunity and also  
24 purporting to waive exhaustion of the Tribe's administrative remedies which include proceeding  
25 in its Tribal Court.

26          9.       Under existing Tribal law and federal law, including the recently decided case,  
27 *Water Wheel Recreational Area, Inc. v. Larance* (2011), 642 F.3d 802, the Los Coyote's tribe's  
28 exclusive jurisdiction for resolution of the lease's validity and also its enforcement or breach, is

1 its tribal court, the Intertribal Court of Southern California. Plaintiff was put on notice of that  
2 fact in a written notice pursuant to tribal law on or about September 12, 2011. That notice  
3 advised plaintiff that pursuant to its eviction and exclusion ordinance Plaintiff had 15 days to  
4 remove their property. A true and correct copy of the Tribe's Eviction and Exclusion Ordinance  
5 and Resolution adopting same is attached hereto as Exhibit "A."

6 10. Defendant, Los Coyotes has a number of other disputes with the factual recitation  
7 submitted by Plaintiff, which point to the merits of the case and which cannot be addressed on an  
8 ex-parte basis that effectively eliminates any ability for Defendant to respond to a federal lawsuit  
9 in the time table allowed under its rules of civil procedure.

10 11. Since Plaintiff is requesting that this court allow it to occupy a federal Indian  
11 Reservation on trust land, it is in effect asking for an extraordinary remedy that this court does  
12 not have the authority or jurisdiction to grant, and even if it did it would require a substantial  
13 amount of a bond.

14 12. At a minimum a bonding hearing should be required prior to this court  
15 considering any type of order enjoining an Indian tribe from occupying part of its Reservation  
16 and regulating who does or does not come on that reservation for the purpose of discharging  
17 weapons, artillery, and causing unpermitted environmental and cultural damage, including  
18 unauthorized grading. A true and correct copy of the Tribe's environmental ordinance that  
19 identifies its regulations and permitted activities and resolution adopting same is attached as  
20 Exhibit "B" hereto.

21 13. The irreparable harm identified by Plaintiff is essentially a contract dispute and  
22 should not rise to the level of a restraining order or any other type of extraordinary remedy. See  
23 *Donham v. U.S. Department of Agriculture*, D.C.Ill. 1989, 725 F.Supp. 985.

24 14. Plaintiff is attempting to impute individual criminal action that is part of an  
25 ongoing arson investigation to the Tribe. Such imputation is not only improper, and not a tribal  
26 act, but cannot form the basis for a restraining order.

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1           15.     Plaintiff relies on circular logic for this court to assume jurisdiction or to make  
2 any provisional orders since, if the purported lease is not valid then the purported waiver of  
3 immunity contained therein is also not valid.

4           16.     For the foregoing reasons, Defendant the Los Coyotes Band of Cahuilla and  
5 Cupeno Indians objects to this court issuing any type of temporary restraining order and also  
6 objects to this court's jurisdiction and will move to quash service. Moreover, the purported  
7 service of the moving papers on the law enforcement kiosk was not proper service and  
8 Defendant appears specially to challenge the validity of such.

9           The proposed Order submitted by Plaintiff should be denied in its entirety.

10  
11 Dated: September 19, 2011

Respectfully Submitted,

CALIFORNIA INDIAN LEGAL SERVICES

12  
13  
14           By: /s/Mark Radoff  
15           Mark Radoff, SBN 119311  
16           Dorothy Alther, SBN 140906  
17           Mark Vezzola, SBN 243441

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**PROOF OF SERVICE**

I, the undersigned, declare that I am over the age of eighteen and not a party to the within action. I am employed in, or a resident of the County of San Diego, California, in which the following service occurred. My business address is 609 South Escondido Blvd., Escondido, California.

On September 19, 2011, I caused a true copy of the following document(s) to be served in this action upon the person(s) set forth below, by the method indicated.

**DOCUMENT(S) SERVED:**

**DEFENDANT’S OPPOSITION TO TEMPORARY RESTRAINING ORDER**

**PERSON(S) SERVED:**

G. William Vandeweghe, Jr. (SBN 149355)  
Christian D. Humphreys (SBN 174802)  
Jae K. Park (SBN 234474)  
MCKENNA LONG & ALDRIDGE LLP  
4435 Eastgate Mall, Suite 400  
San Diego, CA 92121  
E-mail: [vbvandeweghe@mckennalong.com](mailto:vbvandeweghe@mckennalong.com)  
[chumphrey@mckennalong.com](mailto:chumphrey@mckennalong.com)  
[jpark@mckennalong.com](mailto:jpark@mckennalong.com)  
Fascimile: (619) 595-5450

  X   (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail this day at Escondido, California. I am “readily familiar” with the firm’s practice of collecting and processing mail. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

  X   (BY FACSIMILE and E-MAIL) I caused the said document to be transmitted by Facsimile Transmission to the number indicated after the addresses noted above or on the attachment herein, and e-mailed to the address noted above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed at Escondido, California, this 19<sup>th</sup> day of September, 2011.

  
\_\_\_\_\_  
Lavonne E. Kiser

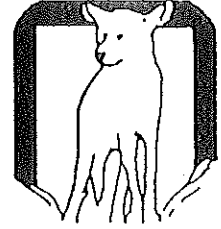
# **EXHIBIT A**



# Los Coyotes Band of Indians



P.O. Box 189 • Warner Springs, CA 92086  
(760) 782-0711 • Fax: (760) 782-2701



## LOS COYOTES BAND OF CAHUILLA AND CUPENO INDIANS EVICTION, AND EXCLUSION ORDINANCE

### **Section 1. Purposes and Findings**

The Los Coyotes Band of Cahuilla and Cupeno Indians (“Tribe”) is a federally recognized Tribe, governed by its customs and traditions; and

According to the Tribe’s customs and traditions, the General Council possesses the inherent right authority to establish laws to govern the conduct of individuals within the boundaries of the Reservation lands; and

The Tribe needs to promote the safety of all tribal members and individuals who reside or visit the Reservation lands;

In accordance with the customs and traditions of the Los Coyotes Band of Cahuilla and Cupeno Indians (“Tribe”), on November 12, 2000 Tribe enacted a Law and Order Code, which established a set of rules which must be followed by all individuals within the boundaries of the Reservation; and

In addition to the Law and Order Code, the General Council has the authority to establish uniform rules and procedures for the removal of persons and property from the Reservation lands under certain circumstances; and

The General Council finds that the subject matter of this ordinance directly affects the political integrity, economic security, and the health and welfare of the Tribe.

### **Section 2. Definitions**

- a. “Assignment” means a formal right to use Reservation land as defined by the General Council.
- b. “General Council” means the governing body of the Tribe, which consists of all members of the Tribe eligible to vote.
- c. “Person” shall mean any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

Los Coyotes Band of Cahuilla and Cupeno Indians  
Eviction and Exclusion Ordinance

- d. "Premises" shall mean that portion of the Reservation that is the subject of an order of eviction.
- e. "Reservation" means all lands within the exterior boundaries of the Los Coyotes Indian Reservation held in trust by the United States for the benefit of the Tribe.
- f. "Spokesperson" means the person elected by the General Council who is authorized to carry out the decisions made by the General Council.
- g. "Tribe" means the Los Coyotes Band of Cahuilla and Cupeno Indians

**Section 3. Right to Use of Reservation Lands**

- a. A person may exercise possession and use of Reservation lands only pursuant to a valid lease, assignment or license as authorized by the General Council of the Tribe which is in effect.

**Section 4. Grounds for Eviction or Exclusion from Reservation Lands**

- a. **Grounds for Eviction-**A person is subject to eviction from the Reservation under this ordinance for any one or more of the following reasons:
  - 1. A person is in possession of Reservation lands without the consent of the Tribe, evidenced by lease, assignment or license, as authorized by the General Council;
  - 2. A person is in possession of Reservation lands that the person had possessed with the consent of the Tribe, evidenced by lease, assignment or license, as authorized by the General Council, but the consent has subsequently been withdrawn by the General Council;
  - 3. A person is in possession of Reservation lands which the person had possessed with the consent of the Tribe, evidenced by lease, assignment or license, as authorized by the General Council, but the person is in default or violation of their obligations under such lease, assignment or license.
- b. **Grounds for Exclusion-**A person is subject to exclusion from Reservation lands under this ordinance for any one or more of the following reasons:
  - 1. A person is not an enrolled member of the Tribe; or
  - 2. A person
    - a. is an enrolled member of the Tribe;
    - b. does not have a present right of possession and use of Reservation lands under Article III; and

Los Coyotes Band of Cahuilla and Cupeno Indians  
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- c. the General Council of the Tribe has determined by a majority at a General Council meeting, that the presence of the person on

reservation lands is not in the interest of the peace, health, economic development or general welfare or of the membership of the Tribe.

- c. Tribal Police, upon discretion or personal observation, or direction of the tribal administration, may temporarily exclude or remove any person from the reservation for an immediate threat to the health, safety or security of tribal members, guests or residents of the reservation. This temporary exclusion or removal shall remain in effect until formally directed, upon petition by the Chief of Police, by the Tribal Chairperson or Tribal Council at the next meeting of the General Council, who may make the exclusion permanent or modify the exclusion as necessary.

**Section 5. Notice of Eviction**

- a. **Commencement of an Eviction Action**-Upon a determination of the General Council of the Tribe that a person should be evicted from Reservation lands, the Tribe shall commence an action in the Los Coyotes Tribal Court seeking such eviction. An eviction action shall be governed by the rules applicable to civil actions in the Los Coyotes Tribal Court, subject to (1) the requirements of Section 2 of this Article, and (2) the modifications of such roles provided for in Article VI of this ordinance.
- b. **The Complaint**-In addition to the elements required by the civil rules of the Los Coyotes Tribal Court, the complaint in an action for eviction and/or exclusion shall contain, or shall be accompanied by a separate notice containing;
  1. A brief summary of the reason for eviction, exclusion, or both;
  2. In the case of an action for eviction, a specific period of time, not less than fifteen (15) calendar days, in which the person is to vacate the premises and to remove any and all property;
  3. A statement that the person may contest the eviction or exclusion by making a written request for a hearing before the Los Coyotes Tribal Court within the time period provided by the rules of the Los Coyotes Tribal Court (as modified in accordance with Article VI of this Ordinance).
  4. A statement that any property left on the premises after the date specified in the notice may be either disposed of, or stored, at the Tribe's election, and any stored property must be claimed within fourteen (14) days (except for vehicles which must be claimed within thirty (30) days), and that any accrued storage costs must also be paid.

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Eviction and Exclusion Ordinance

5. A statement that if the person subject to the eviction and/or exclusion fails to vacate within the time period provided, the person shall be subject to fines, money damages and any cost or expenses incurred as a result of the persons failure to vacate, as established by the General Council.
  6. A statement that, in the event of any contest of the eviction or exclusion before the Los Coyotes Tribal Court, the decision of the Los Coyotes General Council is final and not subject to further appeal.
- c. **Service of the Summons and Complaint**-A copy of the summons and complaint shall be served upon the person subject to eviction or exclusion in a manner provided by the Rules of Civil Procedure. In the absence of any adopted rules at the time the eviction or exclusion proceeding is commenced, the summons and complaint shall be served either by:
1. Delivering copies personally to the person subject to eviction or exclusion, or to any adult residing on the premises and, if applicable any sublessee; or
  2. Posting copies of the summons and complaint in a conspicuous place near the entrance to the property, and sending additional copies of the summons and complaint to the person subject to eviction or exclusion or to any other occupant of the premises, and, if applicable, to the sublessee, by the U.S. Postal Service, or through other reliable means of courier delivery.

**Section 5. Jurisdiction of the Los Coyotes Tribal Court**

- a. **Designation of the Los Coyotes Tribal Court**-The General Counsel may designate the Intertribal Court of Southern California, or some other judicial forum, as the Los Coyotes Tribal Court for purposes of this ordinance. Such form shall have the power and authority to hear and adjudicate actions seeking eviction and/or exclusion, as provided herein.
- b. **Validation Action**-Subject to the authority of the General Council, the Los Coyotes Tribal Court shall be authorized to hear and adjudicate declaratory and injunctive actions brought by the Tribe seeking the enforcement of this ordinance or of any action the Tribe has taken hereunder,
- c. **Jurisdiction Exclusive**-Subject to the authority of the General Council, the jurisdiction of the Los Coyotes Tribal Court under Sections 1 and 2 of this Article VI is exclusive as to any other tribal, state or federal court.
- d. **Rules of Civil Procedure/Rules of Court**- In the absence of any adopted rules at the time the eviction or exclusion proceeding is commenced, the rules of procedure and rules of court prepared by the Intertribal Court of Southern California in effect as of the date of the passage of this

Los Coyotes Band of Cahuilla and Cupeno Indians  
Eviction and Exclusion Ordinance

Ordinance shall be adopted and followed by the Los Coyotes Tribal Court in connection with actions for eviction and/or exclusion hereunder. Amendments to the Intertribal Court rules of procedure and rules of court that occur after the passage of this Ordinance are to be affirmatively approved by the General Council, or by the Tribal Spokesperson if authorized by the General Council, before they are deemed to apply to actions arising pursuant to this Ordinance.

- e. **Sovereign Immunity**-The adoption of this Ordinance and commencement of any actions pursuant to this or other ordinances or rules of procedure and rules of court in no way shall be interpreted as a waiver of the sovereign immunity of the Los Coyotes Band of Cahuilla and Cupeno Indians.
- f. **Decisions Final**-Any decision rendered by a judicial forum other than the Los Coyotes General Council shall be appealable only to the Los Coyotes General Council, and the General Council's decision shall be final.

**Section 6. Enforcement**

- a. **Enforcement of Eviction and Exclusion Orders**-The Spokesperson is authorized to take any and all steps necessary to enforce any eviction or exclusion order of the General Council and Los Coyotes Tribal Court.
- b. **Assistance from Law Enforcement**-In cases where it deems it necessary or desirable, the Spokeswoman, after consulting with the General Council, is authorized to seek the assistance of tribal, state or federal law enforcement authorities, including the Bureau of Indian Affairs, and to retain any other personnel for such purpose, to assist with, or to keep the peace in connection with, the enforcement of any eviction or exclusion order of the Los Coyotes Tribal Court.

**Section 7. Adoption and Amendment**

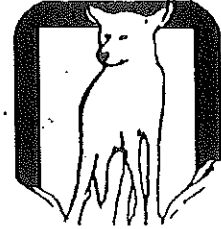
- a. This Ordinance shall be adopted by a majority vote of tribal members voting at a duly call General Council meeting with a quorum present, and shall be amended in the same manner.



# Los Coyotes Band of Indians



P.O Box 189 • Warner Springs, CA 92086  
(760) 782-0711 • Fax (760) 782-2701



## RESOLUTION #061409-3

### EVICITION ANE EXCLUSION ORDINANCE

WHEREAS; Los Coyotes Band of Indians is a federally recognized reservation who are governed by our customs and traditions and,

WHEREAS; the need to protect the safety of persons residing within, or visiting the Territory has a direct effect on the political integrity, economic security, and health and welfare of the Tribe, and,

WHEREAS, A set of laws governing the conduct of persons with the Territory has existed for decades and the Tribe is transcribing these laws for the purpose of clarifying any presently existing misconceptions about the nature of these laws; and,

WHEREAS; The Tribe needs to promote the safety of all tribal members, residents and guests living on the reservation, and,

WHEREAS; The Tribe desires to formally codify procedures to evict persons from the reservation, and exclude those that pose a threat to the health, safety, security and economic prosperity of the tribe, and,

WHEREAS, In accordance with the Custom and Tradition of the Tribe, the people of the Los Coyotes Band of Cahuilla and Cupeno Indians find it in the best interests of the Tribe to enact the attached EVICTION AND EXCLUSION ORDINANCE for the Tribe,

NOW THEREFORE BE IT RESOLVED, that the General Council hereby approves the attached EVICTION AND EXCLUSION ORDINANCE, effective immediately.

### CERTIFICATION

On June 14, 2009, at a duly called General Council meeting held by the Los Coyotes Band Of Indians at which a quorum was present, the foregoing resolution was presented and adopted by a vote of 22 for; 0 against; 1 abstaining. Adults present; 34.

Spokeswoman

*Francine Lopez*

Witnessed by Committee

*Jana Jones*  
*Lynn Chaparro*  
*Clara Beth Almodin*

# **EXHIBIT B**

ENVIRONMENTAL PROTECTION ORDINANCE FOR RESERVATION ECONOMIC  
DEVELOPEMENT PROJECTS

SECTION 1 - DEFINITIONS:

- a) "Tribe" shall mean the Los Coyotes Band of Cahuilla and Cupeno Indians.
- b) "Council" shall mean the General Council.
- c) "Person" shall mean any individual, permittee, corporation, firm, partnership, joint venture, social club, the United States or its representative agencies, State, County or City and their representative agencies, NOT tribal administration or tribal members.
- d) "Reservation" shall mean all land, air, water, surface or underground located on or funning through the Reservation, and all designated Indian Reservation Roads connected to the Reservation.
- e) "Permit" shall mean any written document or form, approved by the Tribal Administrator, authorizing any person to conduct any business or business or related construction or grading of land on the Reservation or Indian Reservation Roads.
- f) "Construction" shall mean the building of any permanent or non-permanent structure, which cannot be readily demolished in one day without any disturbance of the land, and/or the grading of more than 25 yards of ground.

SECTION 2 - PROCEDURES:

1. Any economic development project requiring construction shall be approved by the council prior to any commencement of construction.
2. Prior to the commencement of construction, a permit shall be requested from Tribal Administration (or designee) authorizing any construction. The permit shall at a minimum, identify the person or entity requesting the permit, identify the site

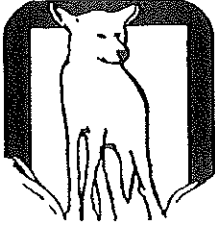
- of the construction ( site map) , date of the construction and estimated completion date and a detailed description of the construction. Any construction of a structure that can be occupied by any person shall meet US Building Code requirements.
3. The permit shall be signed by the Tribal Administrator, and provided to the Code Enforcement Officer "CEO", (or designee, such as Police or EPA Inspector). The CEO shall conduct a site visit with the person to verify the site of construction and site map.
  4. The COE shall inspect the site at the beginning of construction, midway through construction and at the end of construction for compliance. The inspections shall be noted on the permit which shall be maintained in the tribal administration office. The COE will consult with the Director, EP, for water resources inspections.
  5. The permittee shall prior to construction, retain a Cultural Monitor, who shall be a tribal member. The permittee shall compensate the Cultural Monitor a fee, not to exceed \$18.00 per hour. This monitor shall be on site at all times construction is being done, and shall monitor the site for identification of any cultural artifacts or human remains or gravesites. The Cultural Monitor shall, prior to the start of construction, conduct a survey and research is to any environmental concerns, including endangered species and plant life. If any cultural artifacts, remains or sites are discovered, the Cultural Monitor shall direct all construction to be immediately ceased and the Tribal Spokesperson shall be immediately notified. The tribal Spokesperson or his/her designee shall determine if construction shall continue or be suspended pending further inspection. Any personnel conflicts will be adjudicated by the Tribal Administrator.
  6. The permittee shall, prior to construction, retain a Fire watch, who shall be a tribal member. The permittee shall compensate the Fire watch a fee, not to exceed \$18.00 an hour. This Fire watch shall be on site at all times construction is being done, and shall monitor the site for any instances of fire. The permittee shall provide at the minimum, a backpack water sprayer, for immediate fire suppression. Any personnel conflicts will be adjudicated by the Tribal Administrator.

### SECTION 3 - MITIGATION:

1. Any issues that arise regarding any direction of extended work stoppage shall be directed to the Tribal Administrator. The Tribal Administrator shall make a

determination of work should remain stopped and if the Spokesperson shall be notified.

2. Any issues of permit or other violation may be handled by the Tribal Administrator. The Tribal Administrator shall determine the proper mitigation procedures. The tribal Administrator may issue a fine, up to \$5000.00 or initiate a termination action by the General Council. The decision of the Council shall be final.



# Los Coyotes Band of Indians



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RESOLUTION # 061409-4

## ENVIRONMENTAL PROTECTION ORDINANCE FOR RESERVATION ECONOMIC DEVELOPEMENT PROJECTS

WHEREAS; Los Coyotes Band of Indians is a federally recognized reservation who are governed by our customs and traditions and,

WHEREAS; The Tribe, as a federally recognized Indian tribe and sovereign nation, has the inherent duty and responsibility to maintain the health, safety and welfare of the members living on the Reservation. And as such, the Tribe desires and promotes economic development on the reservation to maintain and improve our status of living and create jobs for our members.

WHEREAS; The need to protect the health, safety and well being of persons residing within, or visiting the Territory has a direct effect on the political integrity, economic security, and health and welfare of the Tribe, and,

WHEREAS; The Tribe wishes to remain in charge of its own destiny, and maintain sovereign control of the affairs of the tribe and the use of the Reservation and the Tribe wishes to codify the requirements and procedures of outside business partners doing business on the reservation, to monitor and implement procedures to promote business enterprise, with the utmost consideration to the effect such business will have on the environment, way and quality of life for our residents.

WHEREAS; Tribe enacts this Environmental Protection Ordinance for Reservation Economic Development Projects", with Procedures in ATTACHMENT "A".

### CERTIFICATION

On June 14,2009, at a duly called General Council meeting held by the Los Coyotes Band Of Indians at which a quorum was present, the foregoing resolution was presented and adopted by a vote of 28 for; 0 against; 0 abstaining.

Adults present; 34  
Spokeswoman

Witnessed by Committee

*Franci Kessel*

*Jina Johnson*  
*Lynn Chapala*  
*Elizabeth Medina*