

MORONGO BAND OF MISSION INDIANS

ORDINANCE 31

ORDINANCE REGULATING
UTILITY TRANSMISSION SYSTEM
RIGHTS-OF-WAY

Approved August 5, 2006

The Morongo Band of Mission Indians
Ordinance Regulating Utility
Transmission System Rights of Way

CONTENTS¹

- Section 1. Findings.
- Section II. Purpose.
- Section III. Notice of Intent to file Application.
- Section IV. The Project Application.
- Section V. Processing Schedule.

¹ Although a “CONTENTS” section was not included in the original Ordinance as adopted, it has been added here in order to simplify locating a section.

Morongo Band of Mission Indians Morongo Indian Reservation

Ordinance Regulating Utility Transmission System Rights of Way²

An Ordinance establishing regulations and procedures for the submission, review and grant or denial of applications for the issuance, renewal or modification of licenses, easements, rights of way or other rights in, across, under or upon the lands of the Morongo Indian Reservation for the location, construction, operation, modification, maintenance or replacement of electric transmission lines, pipelines of any kind, access roads, telecommunication facilities, pumping or booster stations or any other utilities to be owned or operated by any person or entity other than the Morongo Band of Mission Indians.

Pursuant to its inherent sovereign powers over the lands and territory of the Morongo Band of Mission Indians and all persons voluntarily present within such territory or doing business thereon, and in accordance with its customs and traditions, the Morongo Band of Mission Indians hereby ordains as follows:

Section 1. Findings.

- A. The Morongo Band of Mission Indians (“Band”) is recognized by the Secretary of the Interior as maintaining government-to-government relations with the United States of America, and as exercising jurisdiction over the lands and territory of the Band, its members and all other persons voluntarily present within the Morongo Band's territory or doing business on the Morongo Indian Reservation (“Reservation”).
- B. The Reservation was created by Executive Orders of the President issued pursuant to federal statutes, and was set aside for the exclusive use and benefit of the Band.
- C. The Reservation is a small remnant of the Band's traditional territory, and the Band's exercise of jurisdiction and stewardship over the lands of the Reservation is essential to the Band’s continued existence as a distinct cohesive sovereign and cultural entity. The Band does not have the option to relocate to other lands, and doing so would sever the deep historical and cultural ties that the Band has to the lands now within the boundaries of the Reservation.

² See also Ordinance C – Land Use Ordinance # 2, restricting utility projects and/or rights-of-way that do not directly benefit the Tribe, adopted pursuant to Proposition No. 3 approved on June 24, 1978. In the event of any inconsistency(cies) between Ordinance C and this ordinance, the provision(s) of this ordinance would supersede the provisions of the earlier ordinance. Similarly, in the event of any inconsistency(ies) between this ordinance and a ballot proposition approved subsequent to the adoption of this ordinance, the language of the ballot proposition would prevail.

- D. In the past, non-Indian persons and/or entities have appropriated lands of the Reservation for the purpose of constructing and maintaining various utility facilities, including electric transmission lines, pipelines carrying petroleum products, natural gas, water and other materials, access roads, telecommunication facilities and other utility-related uses, sometimes without any legal right to do so and without paying any consideration therefore, and sometimes with the consent of federal authorities in return for the payment of little or no consideration.
- E. As the result of the activities described in the preceding paragraph, the Band has been deprived of large amounts of revenue for the use of its lands, the Band and its members have been deprived of the opportunity to use and develop tribal lands for the purposes for which the Reservation was created, and lands of the Reservation have been put to the use of others, to the severe detriment of the Band and its members, and the Reservation environment.

Previous utility transmission right of way determinations by third parties are clearly recognized to have been detrimental to the Morongo Indian Reservation and the rights of its members. Just as clearly, subsequent changes in the laws governing Tribal Lands have vested with the Tribal Members the right for the Morongo Band of Mission Indians to assert their sovereignty through the right of consent for all proposed land use decisions on the reservation. The Morongo Tribal Members and their Council have the power of consent for the use of their lands and they intend to apply that power in a responsible manner.

- F. The Band, utility companies and the public would benefit from the establishment of a clear process to govern the submission to and review and consideration by the Band of applications to obtain, maintain or renew a license, right of way, easement or other right to locate, construct, operate, modify, maintain or replace any utility facilities in, across, under or upon the lands of the Reservation.

It is hereby ordered that the planning, permitting, construction or upgrading of utility transmission, pipeline, substation, pumping or booster stations or renewal of previously granted rights of way for these facilities which are proposed to be located on or across the Morongo Indian Reservation shall first file applications with both the Morongo Realty and Planning Departments requesting the authorization to locate such facilities on or across the Morongo Indian Reservation.

Section II. Purpose.

The purposes of this Ordinance are:

- A. to establish the procedures for applying for initial, renewal, or modifications to utility and road licenses, rights of way, easements or other rights in, across, upon or under the lands of the Reservation, the procedures and criteria by which such applications will be reviewed and the process by which the decision to grant or deny applications will be made;
- B. to assure timely notice to the Band of the intent to make any such application;
- C. to assure that such applications will be processed in a timely manner that will enable applicants to complete system planning activities and proceedings before other governmental bodies with jurisdiction over projects outside of Reservation boundaries;
- D. to assure those decisions about grants of licenses, rights of way, easements and other rights in the lands of the Reservation are consistent with the Band's plans for the use of its lands;
- E. to assure that the Band receives adequate and appropriate compensation commensurate with the nature and value of the rights conferred, whether in money and/or other forms of compensation, for the use of irreplaceable tribal lands and resources;

Section III. Notice of Intent to file application.

- A. Notice Required. No application for a license, right of way, easement or other right in the lands of the Reservation will be accepted unless the applicant has submitted to the Morongo Realty Department a notice of intent to submit such application at least 90 days prior to the submission of an application.
- B. Contents of Notice. The Notice of Intent to file an application for a license, right of way, easement or other right in the lands of the Reservation shall minimally contain the following information:
 - 1. Applicant's name, business address, telephone number, form of entity, name and contact information of the Chief Executive Officer and the project manager;
 - 2. Earliest anticipated filing date of an application;

3. Detailed description of the nature and scope of the entire project, including that portion of the project to be located within the boundaries of the Reservation;
4. Detailed description of the project facilities to be located within the boundaries of the Reservation, the dimensions and the legal description of the area of the Reservation for which rights will be sought;
5. The proposed permitting and construction schedule for the project;

Section IV. The Project Application.

- A. **Application Processing Fee.** Within 10 business days after receipt of a Notice of Intent to Apply, the Morongo Planning Department will inform the applicant of the processing fee that must be submitted to reimburse the Band for its reasonable costs incurred in reviewing the documents and information submitted with the Application. Review of the submitted documents will begin upon receipt of the formal Application and the required processing fee.
- B. **Application Processing.** Upon receipt of the Application and the Application Processing Fee, the Morongo Planning and Realty Departments will commence their review of the Application submittal. Within 45 days after commencing such review, the Morongo Realty Department shall notify the applicant whether the Application has been determined to be complete, and if not, what additional materials must be submitted in order for application processing to be completed.
- C. **The Application.** The Application shall contain, at a minimum, all of the following information and or data.
 1. The Application shall consist of an original and fifteen (15) copies.
 2. The information submitted with the "Notice of Intent to File" shall be updated and submitted with the Application.
 3. Copies of any environmental, economic and other analyses that the applicant has performed in connection with the proposed project.
 4. Detailed information identifying required alternative routings or locations or locations for the project that the applicant has designated as such.
 5. Copies of any economic or other justifications for the project that applicant has submitted to any other governmental jurisdiction.
 6. Copies of any permits or certificates that the applicant already has obtained from other governmental jurisdictions in connection with the project, or the status of such applications. Or if permits or certificates have been filed but not yet obtained the status of such permits or certificates must be described.

7. To the extent not already provided in response to number three (3) above, a specific analysis of potential impacts on the soil, water and air for the Morongo Indian Reservation suitable for NEPA must be presented.
8. A forecasted 15 year utilization plan for all loads, capacities, or other service uses of the facilities including the associated economic forecast for the project.
9. A proposed compensation plan for the granting of the proposed rights of way.

D. Permit to Construct³

1. No person or corporation shall survey or begin construction of any facilities on or across the Morongo Indian Reservation without first having applied for and obtained a permit to do so from the Morongo Band of Mission Indians.
2. All non conforming land use designations shall be required to obtain a "Conditional Use Permit" prior to any actual project construction or the renewal of rights of way or easements for existing facilities.

E. Annual Reports.⁴

Every person or other entity that is the beneficiary of a right of way on, under or across the lands of the Morongo Indian Reservation for utility purposes shall, on or before March 1 of each calendar year, submit to the Morongo Tribal Council a report of loads, uses, and the economic values of the holder's facilities located on the Reservation. This filing shall include an updated copy of the 15 year forecast of utilization for these facilities. The filing of any such report shall not be construed as having received authorization for any use, construction, and or modification not originally authorized by the original agreement.

Additionally, the report shall include a detailed enumeration and description of all outages, outage durations, spills or other occurrences having actual or potential impacts on the natural or human environment of the Morongo Indian Reservation.

³ The ordinance as approved incorrectly designated this as a second subsection B and incorrectly designated the following subsection as a second subsection C. For clarity and ease of future reference, these subsections have been redesignated as subsections D and E, respectively.

⁴ See note 3 above.

Section V. Processing Schedule.

The following schedule is provided as a guideline for receipt, evaluation, and determination for all proposed utility right of way applications on, under or across the Morongo Indian Reservation.

1. Notice of Intent to Submit Application: A Notice of Intent to Submit Application shall be reviewed for sufficiency within ten (10) days of receipt, with a notice of the adequacy or deficiency of information to be given within thirty (30) days after receipt by the Morongo Realty Department
2. Review of Application: Upon receipt of the Application and Processing fee, the Planning and Realty Departments shall review the Application for completeness and adequacy within 45 days after receipt, and notify the Applicant whether the Application has been determined to be complete or deficient. The Planning and Realty Departments shall complete their review of the complete Application within 90 days after receipt of a complete application, and based thereon shall prepare and submit their recommendations to the Morongo Tribal Council.
3. Upon receipt of the Planning and Realty Departments' recommendations concerning the Application, the Tribal Council and/or designated representatives will commence negotiations with the Applicant regarding the appropriate compensation and other terms and/or conditions of the proposed right of way, with the objective of concluding such negotiations within 120 days after commencement. The actual duration of the negotiating period may vary depending on the magnitude and complexity of the proposed project
4. Upon concluding negotiations with an agreement in principal, the Tribal Council shall submit the matter to the General Membership at its next regularly scheduled meeting, and recommend that the matter be submitted to a vote of the General Membership. If the General Membership authorizes placing the matter on the ballot, the matter will be submitted to the General Membership for a vote within 60 to 90 days.
5. After receipt of an affirmative response from the General Membership the appropriate permits, rights of way, and or easements will be executed in compliance with Code of Federal Regulations, Title 25 Part 169 – Rights-of-Way over Indian Lands.