



**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS**

**APPROVAL OF**

**NORTHERN CHEYENNE TRIBE OF THE NORTHERN CHEYENNE  
INDIAN RESERVATION, MONTANA  
TRIBAL LANDS LEASING ACT**

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The attached Tribal Lands Leasing Act, submitted by the Northern Cheyenne Tribe (listed in the Federal Register, Vol. 86, No. 18 FR 7556 (January 29, 2021) as the Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 87 pages and adopted by the Northern Cheyenne Tribal Council on June 7, 2021, is hereby approved.

Dated: JAN 24 2022



Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Tribal Lands Leasing Act of 2021

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## Chapter A-General Provisions

### Purpose, Definitions, and Scope

#### *§ 101 What is the purpose of this Act?*

- (a) The purpose of this Act is to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112<sup>th</sup> Cong. (2012) (25 U.S.C. § 415 (h) ("HEARTH Act")) and associated leasing and permitting regulations in 25 U.S.C. Part 162, and to promote leasing on Tribal Land for economic development and other purposes while avoiding or mitigating possible adverse impacts of such development to the aesthetic, environmental, biologic, and cultural aspects of the Reservation.
- (b) This Act is promulgated by the Northern Cheyenne Tribal Council pursuant to the Tribe's inherent sovereign authority. The Tribal Council is the governing body of the Northern Cheyenne Tribe, organized and operating under the Tribe's Amended Constitution and Bylaws approved by the Secretary of the Interior on May 31, 1996. The Tribal Council is authorized under Article IV, Section 1(e), of the Tribe's Constitution to engage in any business that will further the economic well-being of the members of the Tribe and to undertake any economic activity of any nature whatever not inconsistent with law or any of the provisions of the Tribe's Constitution. The Tribal Council is further authorized under Article IV, Section 1(m) to protect the health and general welfare of the Tribe, and is authorized under Article IV, Section 1(r) to adopt and regulate procedures of Tribal officials. The Tribal Council's Constitutional authority extends to the authority to regulate and enter into Leases covered by this Act and to conduct and direct environmental review.
- (c) This Act specifies:
  - (1) Conditions and authorities under which the Tribe may approve certain Leases, as specified in § 102(a), of Tribal Land;
  - (2) How to obtain such Leases;
  - (3) Terms and conditions required in such Leases; and
  - (4) How the Tribe administers and enforces such Leases.
- (d) In addition to this Act itself, Leases approved under this Act:
  - (1) Are subject to applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this Act; and
  - (2) Are subject to Tribal Law.
- (e) Tribal Laws generally apply to land under the jurisdiction of the Tribe, except to the

extent that those laws are inconsistent with applicable Federal law.

- (f) Unless prohibited by Federal law, a Lease is only subject to law other than Tribal Law if:
  - (1) The Lease includes a provision to this effect; and
  - (2) The Tribe expressly agrees to the application of such law.
- (g) A Lease under this Act does not waive the Tribe's sovereign immunity unless the Tribe expressly states its intention to waive sovereign immunity in the Lease of Tribal Land as provided by Tribal Law.
- (h) If any section, paragraph, or provision of this Act is stayed or held invalid, the remaining sections, paragraphs, or provisions of this Act remain in full force and effect.
- (i) Nothing in this Act shall be construed to waive the sovereign immunity of the Tribe or its elected officials, economic enterprises, affiliates, subsidiaries, agencies, employees, or agents.

*§ 102 How is this Act subdivided?*

- (a) This Act includes multiple parts relating to:
  - (1) General Provisions (Chapter A);
  - (2) Agricultural Leases (Chapter B) [Reserved];
  - (3) Residential Leases (Chapter C) [Reserved];
  - (4) Business Leases (Chapter D);
  - (5) Wind or Solar Resource Leases (WSRs) (Chapter E);
  - (6) Records (Chapter F);
  - (7) Environmental Review (Chapter G); and
  - (8) Appeals (Chapter H).

*§ 103 What key terms do I need to know?*

*Act* means this Tribal Lands Leasing Act of 2021, as may be amended from time to time.

*Appeal Bond* means a bond posted upon filing of an appeal.

*Applicant* means a person or entity seeking a Lease from the Tribe.

*Approval* means written approval of a Lease by the Tribal Council.

*Assignment* means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a Lease.

*Best Interest of the Tribe* means the balancing of interests in order to attain the greatest overall monetary and non-monetary value to the Tribe, including the highest economic income, incentives to increase economic development, preserve and enhance the value of Tribal Land, increase employment and jobs on the Tribal Land, and preserve the sovereignty and culture of the Tribe.

*BIA* means the Secretary of the Interior or the Bureau of Indian Affairs within the United States Department of the Interior.

*Business Day* means Monday through Friday, excluding Federal or Tribal holidays and other Days the applicable office of the Tribe is closed to the public.

*Consent or Consenting* means written authorization by a party as set forth in this Act. Consent on behalf of the Tribe may be provided by the Designated Official, Tribal President, or Tribal Council, as specified in this Act.

*Constructive Notice* means notice by:

- (a) A written notice posted at the Tribal government office or community building of the Tribe for at least three Days;
- (b) A written notice published in one or more local newspapers near the affected land or announced on a local radio station(s); and
- (c) A written notice featured prominently on the Tribe's website for at least three Days.

*Day* means a calendar day.

*Designated Official* means the person designated by the Tribe to oversee the regulatory requirements for approving and administering Leases pursuant to this Act, including without limitation Environmental Review pursuant to Chapter G, provided that the duties of the Designated Official may be delegated among one or more agencies or Tribal staff employees (e.g., the Tribe's Land Authority, Environmental Protection Department, Natural Resources Department, etc.), as appropriate.

*Environment* means elements of the natural world, including but not limited to, the air, water, land, minerals, flora and fauna (plant and animal species); as well as historic, traditional, or cultural properties and cultural and historic interests on or near Tribal Land.

*Environmental Review* means a review of the potential environmental effects of a proposed Leasing Transaction conducted under Chapter G of this Act.

*Fair Market Rental Value* means the amount of rental income that a Leased tract of Tribal Land would most probably command in an open and competitive market, or the rental value as determined by competitive bidding, appraisals, arms-length negotiations, or market comparisons.

*Holdover* means circumstances in which a Lessee remains in possession of the Leased Premises after the Lease term expires.

*Land Authority* means the Land Authority of the Tribe.

*Lease* means a written contract between the Tribe and a Lessee whereby the Lessee is granted a right to possess or otherwise make use of Tribal land, for a specified purpose and duration. The Lessee's right to possess or otherwise make use of the Leased Premises will limit the Tribe's right to possess or otherwise make use of the Leased Premises only to the extent provided in the Lease.

*Lease Document* means a written Lease, amendment, Assignment, Sublease, or Leasehold Mortgage.

*Leased Premises* means the Tribal Land subject to the Lease.

*Leasehold Mortgage* means a mortgage, deed of trust, or other instrument that pledges a Lessee's Leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other Mortgagee.

*Leasing Transaction* means the exchange of rights to Tribal Land that is subject to a proposed Lease to be granted upon Approval by the Tribe, or agency or subdivision of the Tribe under this Act.

*Lessee* means a person or entity who has acquired a legal right to possess Tribal Land by a Lease under this Act.

*LTRO* means the Land Titles and Records Office of the BIA.

*Mail* means to send something by U.S. Postal Service or commercial delivery service.

*Mortgagee* means the holder of a Leasehold Mortgage.

*NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq.

*Nominal Compensation* means a rental payment amount that is so insignificant that it bears no relationship to the value of the property that is being Leased.

*Notice of Violation* means a letter notifying the Lessee of a Violation of the Lease or the Act and

providing the Lessee with a specified period of time to show cause why the Lease should not be terminated for the Violation. A ten (10)-Day show-cause letter is one type of Notice of Violation.

*Performance Bond* means security for the performance of certain Lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party Surety.

*Permanent Improvements* mean buildings, other structures, and associated infrastructure attached to the Leased Premises.

*Permit* means written, conditioned permission granted by the Tribe to a Permittee, whereby the Permittee is granted a temporary, revocable privilege to use Tribal Land, for a specified purpose.

*Permittee* means a person or entity who has acquired a permit.

*President* means the President of the Northern Cheyenne Tribe.

*Public* means a person living on or near the Northern Cheyenne Reservation who may be affected by a Lease or related activities.

*Public Comment* refers to a comment submitted by the Public and received by the Tribe during the environmental review process set forth in Chapter G.

*Resource Development Plan* means a plan developed by the Lessee in consultation with the Tribe that describes the type and location of any Permanent Improvements the Lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements.

*Restoration and Reclamation Plan* means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

*Secretary* means the United States Secretary of the Department of the Interior.

*Security* means a performance bond, parent guarantee, or alternate form of security instrument to ensure performance of certain Lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party Surety.

*Significant Effect on the Environment or Significant Effect* means an effect of a proposed Leasing Transaction that will have a substantial adverse impact on the Environment, taking into account the context and intensity of the impact. Effects include direct and indirect effects as well as the cumulative effect of the proposal in combination with existing and reasonably foreseeable impacts on the Environment.

*Sublease* means a written agreement by which a Lessee grants to a third party a right to possession no greater than that held by the Lessee under the Lease.

*Surety* means one who guarantees the performance of another.

*Terminate* means an action to end a Lease.

*Trespass* means any unauthorized occupancy, use of, or action on any Tribal Land.

*Tribal Council* means the Tribal Council of the Northern Cheyenne Tribe.

*Tribal Court* means the Tribal Court of the Northern Cheyenne Tribe.

*Tribal Land* means any land that is held by the United States in trust or restricted status for the benefit of the Tribe or any wholly-owned entity of the Tribe.

*Tribal Law* means the body of Tribal law that governs lands and activities under the jurisdiction of the Tribe.

*Tribe* means the Northern Cheyenne Tribe and Tribal refers to the Tribe.

*Trust or Restricted Land* means any land held in trust or restricted status as follows:

- (a) The United States holds title to the tract in trust for the benefit of the Tribe; or
- (b) The Tribe holds title to the tract but can alienate or encumber it only with the Approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

*Violation* means a failure to take an action, including without limitation payment of compensation, when required by the Lease, or to otherwise not comply with a term of the Lease. This definition applies for purposes of Tribe's enforcement of a Lease under this Act no matter how "Violation" or similar term (e.g., "default") is defined in the Lease.

*§ 104 To what land does this Act apply?*

This Act applies solely to Tribal Land.

*§ 105 What is the effective date of this Act?*

This Act is effective immediately upon approval by the Secretary.

When to Get a Lease

*§ 106 When do I need a Lease to authorize possession of Tribal Land?*

If you are a person or entity other than the Tribe or a wholly owned entity of the Tribe you must secure a Lease under this Act unless you are authorized to possess or use the Tribal Land by a

land use agreement not subject to this Act under § 107(b), by other Tribal or Federal law, or by a permit.

*§ 107 To what type of Leases does this Act apply?*

- (a) This Act applies to Leases of Tribal Land entered into under this Act, as set forth in § 102(a).
- (b) This Act does not apply to:
  - (1) This Act does not apply leases of individually owned Indian land, fractionated interests, or fee lands.
  - (2) Land use agreements entered into under other statutory authority, such as the following:

This Act does not apply to:	Covered by:
(i) Contracts or agreements encumbering Tribal Land under 25 U.S.C. § 81	25 CFR Part 84
(ii) Traders' licenses	25 CFR Part 140
(iii) Timber contracts	25 CFR Part 163
(iv) Grazing permits	25 CFR Part 166
(v) Rights of way	25 CFR Part 169
(vi) Mineral Leases, prospecting permits, or mineral development agreements	25 CFR Parts 211, 212, 213, 225, 226, 227
(vii) Tribal Land Assignments and similar instruments authorizing uses of Tribal Land	Other Tribal Laws

*§ 108 To what permits does this Act apply?*

- (a) Permits for the use of Tribal Land do not require Approval under this Act; however, the Permittee must fulfill the following requirements:
  - (1) Ensure that permitted activities comply with all applicable environmental, cultural resource, or other laws; and
  - (2) Submit all permits to the appropriate Tribal office to allow them to maintain a copy of the Permit in their records. If the Tribe or an office of the Tribe determines within ten (10) Days of submission that the document does not meet the definition of "permit" but instead grants a legal interest in Tribal Land, the Tribe will notify the Permittee that a Lease is required under this Act.
- (b) The Tribe, at its discretion, may require a Permit to undergo Environmental Review subject to Chapter G of this Act.
- (c) The following table provides examples of some common characteristics of permits versus Leases.



Permits	Leases
Permits can be given without any terms being negotiated between two parties.	Leases require an agreement between two parties: usually referred to as the Lessor and the Lessee.
Permits do not place affirmative duties on Permit holder.	Leases place specific duties on the Lease holder, for instance, upkeep and rental payments.
Permits do not authorize any use other the specific use for which the Permit is issued.	Leases authorize the Lease holder to lawfully possess and use the land Leased for any lawful purpose unless otherwise limited in the agreement.
Permits are not transferrable.	Leases can be transferrable.
Permits are revocable.	Leases are not revocable except as specified in the agreement.

(d) The BIA will not administer or enforce permits on Tribal Land.

*§ 109 Does this Act apply to Lease documents submitted to BIA for Approval prior to Secretarial Approval of this Act?*

This Act applies to all Lease documents submitted for Approval by the Tribe after Secretarial Approval of this Act. Any Lease documents submitted to BIA for Approval before the Approval of this Act will be processed pursuant to 25 CFR Part 162, unless you withdraw them from BIA review and submit a new application to the Tribe for Approval under this Act.

*§ 110 Do I need Tribal Approval of a subleasehold Mortgage?*

Unless the Lease or sublease provides otherwise, or the parties request, the Tribe's Approval of a subleasehold mortgage is not required. Subleasehold Mortgages in excess of the total value of the subleasehold interest are prohibited. If the Lease or sublease requires, or parties request, the Tribe's Approval, the Tribe will use the procedures governing its review of Leasehold Mortgages.

How to Get a Lease

*§ 111 How do I obtain a Lease?*

(a) This section establishes the basic steps to obtain a Lease.

(1) Prospective Lessees must:

(i) Notify the Designated Official that the Prospective Lessee seeks a Lease; and

- (ii) Obtain or develop any and all information reasonably requested or required by the Designated Official for use in negotiating, compliance review, and any other reasonable purpose consistent with this Act.
- (2) The Prospective Lessees must then submit the proposed Lease and required information and analyses to the Designated Official for review; and
- (3) the Designated Official, or the Official's duly authorized delegate(s), must:
  - (i) Within sixty (60) Days of receipt, communicate to the prospective Lessee any deficiencies in the Lease application package, additional information needed for the Tribe's consideration of the Lease, and when the application is complete;
  - (ii) and
  - (iii) Ensure the Lease complies with the requirements for the applicable category of Lease.
- (4) Concurrent with the leasing process set forth in this Section, the Prospective Lessee may seek compliance with Chapter G of this Act by submitting a proposal to the Designated Official.
- (5) The Tribal Council will consider Lease Approval or disapproval following completion of Lease negotiations and compliance with Chapter G of this Act.

*§ 112 How does a prospective Lessee identify and contact the Tribe to negotiate a Lease of Tribal Land?*

- (a) Prospective Lessees may submit a written request to the President.
- (b) The President may assist prospective Lessees in contacting the Designated Official for the purpose of negotiating a Lease.

*§ 113 What are the Approval requirements for a Lease?*

The Tribal Council has the sole authority to approve a Lease on Tribal Land under this Act. The Tribal Council must approve the terms of the Lease that comply with this Act for any Lease to be valid.

*§ 114 Who is authorized to approve a Lease?*

The Tribal Council possesses the sole authority to approve a Lease.

## Lease Terms

*§ 115 May a Lease contain a preference consistent with Tribal Law for employment of Tribal members?*

Yes. A Lease of Tribal Land may include a provision, consistent with Tribal Law, requiring the Lessee to give a preference to Tribal members who are qualified to perform the trade or responsibilities of employment, based on their political affiliation (i.e., membership) with the Tribe. A Lease may also include a provision requiring that reasonable training be provided to Tribal members who demonstrate a willingness and capacity to learn how to perform the trade or responsibilities of employment.

*§ 116 What taxes apply to Leases approved under this Act?*

- (a) Permanent Improvements on the Leased Premises, without regard to ownership of those improvements, may be subject to taxation by the Tribe.
- (b) Activities under a Lease conducted on the Leased Premises may be subject to taxation by the Tribe.
- (c) The Leasehold or possessory interest may be subject to taxation by the Tribe.

*§ 117 May a Lease address access to the Leased Premises by roads or other infrastructure?*

A Lease may address access to the Leased Premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements.

*§ 118 May a Lease combine tracts of Tribal Land?*

- (a) The Tribe may approve a Lease that spans one or more tracts of Tribal Land, or that combines multiple tracts of Tribal Land into a unit, if the Designated Official determines that unitization is:
  - (1) In the Best Interest of the Tribe; and
- (b) Consistent with the efficient administration of Tribal Land.
- (c) For a Lease that covers multiple tracts, the Tribal Consent requirement applies to each tract separately. Each request may be considered together with other requests.
- (d) This section does not apply to or authorize combining fractionated interests in Tribal Land.

*§ 119 What are the Designated Official's responsibilities in overseeing and implementing the regulatory requirements for approving and administering Leases?*

- (a) The Designated Official will work to provide assistance to the Tribe in leasing its Tribal

Land, either through negotiations, agency, or advertisement.

- (b) The Designated Official will promote Tribal control and self-determination over Tribal Land.
- (c) The Designated Official will promptly respond to requests by the Tribal Council for information and materials needed by Tribal Council for Approval of Leases, as specified in § 125 and § 440.
- (d) The Designated Official will work to ensure that the use of Tribal Land is consistent with the Tribal Council's wishes on behalf of the Tribe and applicable Tribal Law, including this Act.

*§ 120 What are the Designated Official's responsibilities in administering and enforcing Leases?*

- (a) Upon receipt of information that the Lessee has failed to comply with the terms and conditions of the Lease, the Designated Official will promptly take appropriate action, as specified in § 464. Nothing in this Act prevents the Tribe from exercising remedies available to the Tribe under the Lease or applicable law.
- (b) The Designated Official will promptly respond to requests for Tribal Council Approval of amendments, Assignments, Leasehold Mortgages, and subleases, as specified in Chapters B, C, D, and E.
- (c) The Designated Official will respond to the Tribal Council's concerns regarding the management of Tribal Land.
- (d) The Designated Official will take emergency action as needed to preserve the value of Tribal Land under § 122.

*§ 121 What if an individual or entity takes possession of or uses Tribal Land without an approved Lease or other proper authorization?*

If an individual or entity takes possession of, or uses, Tribal Land without a Lease and a Lease is required, the unauthorized possession or use is a trespass. The Tribe may take action to recover possession, including eviction, on its own behalf and pursue any additional remedies available under applicable law. Use or possession of Tribal Land beyond the scope or duration of the Lease terms constitutes a Trespass in addition to a Violation of the Lease.

*§ 122 May the Tribe take emergency action if Tribal Land is threatened?*

- (a) The Tribe may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Tribal Land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm, or involving BIA or another Federal agency pursuant to the terms and limitations of Federal law.

- (b) The Tribe will make reasonable efforts to notify all parties interested in the Lease before and after taking emergency action. In all cases, the Tribe will notify all parties interested in the Lease after taking emergency action by actual or Constructive Notice. The Designated Official will provide written notification of any action to the President and Tribal Council after taking emergency action and before taking emergency action when at all possible.

*§ 123 May decisions under this Act be appealed?*

The Applicant may appeal decisions from Designated Official actions and decisions, and from Tribal Council Approvals or disapprovals of Leases under this Act, under Chapter H of this Act, except as otherwise provided in this Act.

*§ 124 Who can answer questions about leasing?*

A prospective Lessee may contact the President or the Designated Official for answers to questions about the leasing process.

*§ 125 What documentation may the Designated Official require in overseeing the Act's requirements for approving Leases, for administering Leases, and for enforcing Leases?*

- (a) The Designated Official may require that a prospective Lessee provide any pertinent environmental and technical records, reports, and other information (e.g., records of Lease payments), related to Approval of Lease documents and enforcement of Leases. The prospective Lessee's provision of confidential information may be conditioned upon the Designated Official agreeing to keep confidential any information with confidential, proprietary, or similar marking, and to exempt the confidential information from public release to the extent allowed by law.
- (b) The Designated Official may adopt environmental assessments and environmental impact statements prepared by a Federal agency, Indian Tribe, entity, or person, or may conduct their own review under Chapter G of this Act. The Designated Official may use any reasonable evidence that a Federal agency has accepted an environmental report, including but not limited to letters of Approval or acceptance.
- (c) Upon the Designated Official's request, the parties must make appropriate records, reports, or information available for the Designated Official's inspection and duplication. The prospective Lessee's provision of confidential information may be conditioned upon the Designated Official agreeing to keep confidential any information with confidential, proprietary, or similar marking, and to exempt the confidential information from public release to the extent allowed by law. Except for confidential information that is not subject to such an agreement, the Designated Official may, at their discretion, treat a Lessee's failure to cooperate with such a request, provide data, or grant access to information or records as a Lease Violation.

*§ 126 How may Tribal departments and authorities obtain information about Leases on Tribal Land?*

Upon request of any Tribal department, the Designated Official will promptly provide information on the status of Leases on Tribal Land.

*§ 127 How does the Designated Official provide notice to the parties to a Lease?*

- (a) For Leases of Tribal Land, when this Act requires the Designated Official to notify the parties to a Lease of the status of their review of a Lease Document (including but not limited to providing notice to the parties of the date of receipt of a document, informing the parties of the need for additional review time, and informing the parties that a Lease proposal package is not complete), the Designated Official will notify the prospective Lessee and the Tribal Council by written notice.
- (b) For Leases of Tribal Land, when this Act requires the Designated Official to notify the parties of the Tribal Council's determination to approve or disapprove a Lease document, and to provide any right of appeal, the Designated Official will notify the Lessee and the Tribal Council Secretary by written notice.
- (c) Notice to an Applicant during the Environmental Review process shall be carried out by the Designated Official by written notice.

Chapter B-Agricultural Leases

[Reserved].

Chapter C-Residential Leases

[Reserved].



## Chapter D-Business Leases

### Business Leasing General Provisions

#### *§ 401 What type of Leases does this Chapter cover?*

- (a) This Chapter covers both ground Leases of undeveloped Tribal Land and Leases of developed Tribal Land, together with the Permanent Improvements thereon, on Tribal Land that are not covered in another Chapter of this Act, including:
  - (1) Commercial or industrial Leases for retail, office, entertainment, manufacturing, storage, biomass, waste-to-energy, or other business purposes; and
  - (2) Leases covered by this Chapter may authorize the construction of single-purpose or mixed-use projects designed for use by any number of Lessees or occupants.

#### *§ 402 Is there a model business Lease form?*

There is no model business Lease form because of the need for flexibility in negotiating and writing business Leases; however, the Land Authority or Designated Official, as the case may be, may:

- (a) Provide other guidance, such as checklists and sample Lease provisions, to assist in the Lease negotiation process; and
- (b) Assist, upon request, in developing appropriate Lease provisions that conform to the requirements of this Act.

#### *§ 403 - § 410 [Reserved].*

### Lease Requirements

#### *§ 411 How long may the term of a business Lease run?*

- (a) A business Lease must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a Lease approved under this Act may not exceed an initial term not to exceed twenty-five (25) years and two (2) renewals not to exceed twenty-five (25) years.
- (b) When negotiating Leases for Tribal Land, the Designated Official will defer to the Tribal Council's determination that the Lease term, including any renewal, is reasonable.
- (c) The Lease may not be extended by Holdover.

*§ 412 What must the Lease include if it contains an option to renew?*

- (a) If the Lease provides for an option to renew, the Lease must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) Whether Tribal Consent to the renewal is required;
  - (3) That the Lessee must provide notice of the renewal to the Designated Official and Land Authority and any sureties and Mortgagees;
  - (4) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (5) Any other conditions for renewal (e.g., that the Lessee not be in Violation of the Lease at the time of renewal).
- (b) The Designated Official and Land Authority will record any Lease or renewal of a Lease with the Land Authority and LTRO.

*§ 413 Are there mandatory provisions that a business Lease must contain?*

- (a) All business Leases must identify:
  - (1) The tract or parcel of land being Leased under this Act;
  - (2) The purpose of the Lease and authorized uses of the Leased Premises;
  - (3) The parties to the Lease;
  - (4) The term of the Lease;
  - (5) The ownership of Permanent Improvements and the responsibility for constructing, operating, maintaining, and managing Permanent Improvements under § 415;
  - (6) Payment requirements and late payment charges, including interest and penalties, issued under this Act;
  - (7) Due diligence requirements under § 417 (unless the Lease is for religious, educational, recreational, cultural, or other public purposes);
  - (8) Insurance requirements under § 437; and
  - (9) Bonding requirements under § 434. If a security is required, the Lease must state that the Lessee must obtain the Consent of the Surety for any legal instrument that directly

affects their obligations and liabilities.

(b) Where the Designated Official executes an approved Lease on behalf of the Tribe or Lessee, the Lease must identify that the Tribe or the Lessee is being represented by such representative and must identify the authority under which the action is taken.

(c) All business Leases must include the following provisions:

(1) The obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leased Premises;

(3) The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

(4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Designated Official to determine how to proceed and appropriate disposition of the items;

(5) The Designated Official and the Secretary at their discretion has the right, at any reasonable time during the term of the Lease, upon reasonable notice, in accordance with § 464, to enter the Leased Premises for inspection and to ensure compliance; and

(6) The Designated Official may, at their discretion, treat as a Lease Violation any failure by the Lessee to cooperate with the Designated Official's request to make appropriate records, reports, or information available for the Designated Official's inspection and duplication that are reasonably necessary to determine compliance with Lease terms.

(d) The Lease must also contain the following provisions:

(1) The Lessee holds the United States and the Tribe harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises; and

(2) The Lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of waste or hazardous materials, or the release or discharge of any waste or hazardous material from the Leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the United States or the Tribe for liability or cost arising from the United States' or Tribe's negligence or willful misconduct.

(e) The Designated Official may treat any provision of a Lease Document that violates

Federal or Tribal Law as a Violation of the Lease.

*§ 414 May Permanent Improvements be made under a business Lease?*

The Lessee may construct Permanent Improvements under a business Lease if the business Lease specifies, or provides for the development of:

- (a) A plan that describes the type and location of any Permanent Improvements to be constructed by the Lessee; and
- (b) A general schedule for construction of the Permanent Improvements, including dates for commencement and completion of construction.

*§ 415 How must a business Lease address ownership of Permanent Improvements?*

- (a) A business Lease must specify who will own any Permanent Improvements the Lessee constructs during the Lease term and may specify under what conditions, if any, Permanent Improvements the Lessee constructs may be conveyed to the Tribe during or after the Lease term. In addition, the Lease must indicate whether each specific Permanent Improvement the Lessee constructs will:
  - (1) Remain on the Leased Premises upon the expiration or termination of the Lease and become the property of the Tribe;
  - (2) Be removed within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to their condition before construction of the Permanent Improvements; or
  - (3) Be disposed of by other specified means.
- (b) A Lease that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession of and title to the Permanent Improvements if the improvements are not removed within the specified time period.

*§ 416 How will the Tribe enforce removal requirements in a business Lease?*

- (a) The Designated Official may take appropriate enforcement action to ensure removal of the Permanent Improvements and restoration of the premises at the Lessee's expense:
  - (1) In consultation with the President and Land Authority; and
  - (2) Before or after expiration or termination of the Lease.
- (b) The Designated Official may collect and hold the security until removal and restoration are completed.

*§ 417 What requirements for due diligence must a business Lease application include?*

- (a) If Permanent Improvements are to be constructed, the business Lease must specify a timeframe to complete construction of any Permanent Improvements. The Lease must describe a process for changing the schedule by mutual Consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the Lease, the Lessee must provide the Designated Official with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.
- (b) Failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease under § 467.
- (c) The Tribal Council may waive the requirements in this section upon request if such waiver is in the Best Interest of the Tribe.
- (d) The requirements of this section do not apply to Leases for religious, educational, recreational, cultural, or other public purposes.

*§ 418 How must a business Lease describe the land?*

- (a) A business Lease must describe the Leased Premises by reference to an official or certified survey, if possible. If the land cannot be so described, the Lease must include one or more of the following:
  - (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that is sufficient to identify the Leased Premises.
- (b) Any description of real property must be sufficient and adequate for purposes of recording with the Land Authority and LTRO.

*§ 419 May a business Lease allow compatible uses?*

A business Lease may provide for the Tribe to use, or authorize others to use, the Leased Premises or portions of the Leased Premises for other uses compatible with the business Lease and consistent with the terms of the business Lease. Any such use or authorization by the Tribe will not reduce or offset the monetary compensation for the business Lease.

## Monetary Compensation Requirements

### *§ 420 How much monetary compensation must be paid under a business Lease of Tribal Land?*

- (a) A business Lease of Tribal Land may allow for any payment amount negotiated by the Tribe, and the Designated Official will defer to the Tribal Council and not require a valuation if the Tribal Council submits a Tribal Council authorization expressly stating that it:
- (b) Finds the negotiated compensation is satisfactory to the Tribe;
- (c) Waives valuation; and
- (d) Has determined that accepting such negotiated compensation and waiving valuation is in the Tribe's best interest.
- (e) The Tribal Council may request, in writing, that the Designated Official determine Fair Market Rental Value, in which case the Designated Official will use a valuation in accordance with § 422. After providing the Tribal Council with the Fair Market Rental Value, the Designated Official will defer to the Tribal Council's decision to allow for any payment amount negotiated by the Tribe.
- (f) If the conditions in paragraph (a) or (b) of this section are not met, the Designated Official will require that the Lease provide for Fair Market Rental Value based on a valuation in accordance with § 422.

### *§ 421 [Reserved].*

### *§ 422 How will the Designated Official determine Fair Market Rental Value for a business Lease?*

- (a) The Designated Official will use a market analysis, appraisal, or other appropriate valuation method to determine the Fair Market Rental Value before the Tribal Council approves a business Lease, at the request of the Tribal Council, for Tribal Land.
- (b) The Designated Official will either:
  - (1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
  - (2) Use an appropriate market analysis, appraisal, or other appropriate valuation method from the Tribe or Lessee.
- (c) The Designated Official will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:
  - (1) Has been prepared in accordance with the Uniform Standards of Professional

Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice or another recognized valuation method deemed appropriate and authorized by the Tribal Council; and

(2) Complies with Tribal policies regarding appraisals, including third-party appraisals.

(d) The Designated Official may use competitive bidding as a valuation method.

*§ 423 When are monetary compensation payments due under a business Lease?*

(a) A business Lease must specify the dates on which all payments are due.

(b) Payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

*§ 424 Must a business Lease specify who receives monetary compensation payments?*

(a) Under a business Lease, the Lessee will make payments directly to the Tribe, and the Tribe shall produce documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.

(b) The Lease must include provisions for proof of payment upon BIA's request.

(c) The Lessee must send direct payments to the parties and addresses specified in the Lease, unless the Lessee receives notice of a change of ownership or address.

(d) Unless the Lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Tribe.

(e) Direct payments must continue through the duration of the Lease.

*§ 425 What forms of monetary compensation payment are acceptable under a business Lease?*

Payments made directly to the Tribe must be in a form of payment acceptable to the Tribe, including but not limited to wire transfer, direct deposit, or check.

*§ 426 May the business Lease provide for non-monetary or varying types of compensation?*

(a) A Lease may provide for the following, subject to the conditions in paragraph (b) of this section:

(1) Alternative forms of compensation, including but not limited to in-kind consideration, jobs or other benefits for Tribal members, and payments based on percentage of income; or

(2) Varying types of compensation at specific stages during the life of the Lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) The Designated Official will defer to the Tribal Council's determination that the compensation under paragraph (a) of this section is in the Best Interest of the Tribe, if the Tribal Council submits a Tribal Council resolution or other Tribal Council authorization stating that the Tribal Council has determined the compensation under paragraph (a) of this section to be in the Best Interest of the Tribe.

*§ 427 Will the Tribe notify a Lessee when payment is due under a business Lease?*

The Designated Official may issue invoices to a Lessee in advance of the dates on which payments are due under a business Lease. The Lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

*§ 428 Must a business Lease provide for compensation reviews or adjustments?*

(a) For a business Lease of Tribal Land, unless the Lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the Tribal Council states in its authorizing resolution or other Tribal Council authorization that it has determined that not having compensation reviews or adjustments is in the Tribe's Best Interest.

(b) If the conditions in paragraph (a) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the Lease. The Lease must specify:

(1) When adjustments take effect;

(2) Who can make adjustments;

(3) What the adjustments will be based on; and

(4) How to resolve disputes arising from the adjustments.

(5) When a review results in the need for adjustment of compensation, the Tribal Council must Consent to the adjustment in accordance with § 113, unless the Lease provides otherwise.

*§ 429 What other types of payments are required under a business Lease?*

(a) The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Tribe, except as provided in § 116. The Lessee must pay these amounts to the appropriate office at the Tribe.

(b) If the Leased Premises are within an Indian irrigation project or drainage district, except



as otherwise provided in 25 CFR Part 171, the Lessee must pay applicable operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Designated Official will treat failure to make these payments as a Violation of the Lease.

- (c) Where the property is subject to at least one other Lease for another compatible use, the Lessees may agree among them how to allocate payment of the Indian irrigation operation and maintenance charges.

§ 430-433 [Reserved].

#### Bonding and Insurance

§ 434 *Must a Lessee provide a security for a business Lease?*

- (a) The Lessee must provide a security, except as provided in paragraph (g) of this section.
- (b) The security must be in an amount sufficient to secure the contractual obligations including:
  - (1) No less than:
    - (i) The highest annual rental specified in the Lease, if compensation is paid annually;
    - (ii) If the compensation is not paid annually, another amount established by the Designated Official in consultation with the Land Authority for Tribal Land; or
    - (iii) If the compensation is paid annually in advance, no security for rent shall be required.
  - (2) The construction of any required Permanent Improvements that were not installed by the timeframe required by the Lease;
  - (3) The operation and maintenance charges for any land located within an irrigation project; and
  - (4) The restoration and reclamation of the Leased Premises to their condition at the start of the Lease term, or some other specified condition or timeframe set forth in the Lease.
- (c) The security must be deposited with the Designated Official and made payable only to the Tribe, and may not be modified without the Tribal Council Approval.
- (d) The Lease must specify the conditions, if any, under which the Designated Official may adjust security requirements to reflect changing conditions, including consultation with

the Tribal Council before the adjustment.

- (e) The Designated Official may require that the Surety provide any supporting documents needed to show that the security will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (f) The security instrument must require the Surety to provide notice to the Designated Official at least sixty (60) Days before canceling a Performance Bond or other security. This will allow the Designated Official to notify the Lessee of its obligation to provide a substitute form of security and require collection of the bond or security before the cancellation date. Failure to provide a substitute Performance Bond or other security is a Violation of the Lease.
- (g) Tribe may waive the requirement for security if either:
  - (1) The Lease is for religious, educational, recreational, cultural, or other public purposes; or
  - (2) The Designated Official requests it and Tribal Council determines a waiver is in the Tribe's Best Interest.
- (h) The Designated Official will defer to the Tribal Council's determination that a waiver of a Performance Bond or alternative form of security is in the Tribe's Best Interest.

*§ 435 What forms of security are acceptable under a business Lease?*

- (a) The Designated Official will accept a Performance Bond or corporate guarantee only in one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities;
  - (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury;  
or
  - (5) Corporate guarantees provided by a corporation that has an investment grade rating by Standard and Poor's or Moody's Investor Service deemed acceptable by the Tribal Council.
- (b) The Designated Official may accept an alternative form of security approved by the Tribal Council that provides adequate protection for the Tribe, including but not limited

to an escrow agreement and assigned savings account.

- (c) All forms of security must, if applicable:
  - (1) Indicate on their face that the Tribe's Approval is required for redemption;
  - (2) Be accompanied by a statement granting full authority to the Tribe to make an immediate claim upon or sell them if the Lessee violates the Lease;
  - (3) Be irrevocable during the term of the security; and
  - (4) Be renewable during the term of the Lease.
- (d) The Designated Official will not accept cash bonds.

*§ 436 What is the release process for a security under a business Lease?*

- (a) Upon expiration or termination of the Lease, the Lessee may ask the Tribe in writing to release the security.
- (b) Upon receiving a request under paragraph (a) of this section, the Designated Official will:
  - (1) Confirm with the Land Authority that the Lessee has complied with all Lease obligations; and
  - (2) Release the security to the Lessee, unless the Designated Official determines that the security must be redeemed to fulfill the contractual obligations.

*§ 437 Must a Lessee provide insurance for a business Lease?*

- (a) Except as provided in paragraph (d) of this section, a Lessee must provide insurance necessary to protect the interests of the Tribe and in the amount sufficient to protect all insurable Permanent Improvements on the premises.
- (b) The insurance may include property, crop, liability, and casualty insurance, depending on the Tribe's interests to be protected.
- (c) Both the Tribe and the United States must be identified as additional insured parties.
- (d) The Tribal Council may waive the requirement for insurance upon the request of the Designated Official, if a waiver is determined to be in the Best Interest of the Tribe by the Tribal Council, including if the Lease is for less than Fair Market Rental Value or Nominal Compensation. The Designated Official will defer to the Tribal Council's determination that a waiver is in the Tribe's Best Interest.

## Approval

### *§ 438 What documents are required for Tribal Council Approval of a business Lease?*

- (a) A Lessee must submit the following documents to the Designated Official for review and for presentation to the Tribal Council for Approval of a business Lease:
- (1) A Lease negotiated by the Tribe and the Lessee that meets the requirements of this Act;
  - (2) A valuation, if required under § 420;
  - (3) A proposed form of proof of insurance, if required under § 437;
  - (4) A proposed form of security, if required under § 434;
  - (5) Statement from the appropriate Tribal authority that the proposed use is in conformance with applicable Tribal Law, if required by the Designated Official or Tribal Council;
  - (6) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and Tribal environmental and land-use requirements, including any documentation prepared under § 125 or required under Chapter G;
  - (7) A Restoration and Reclamation Plan (and any subsequent modifications to the plan), if appropriate;
  - (8) Where the Lessee is not an entity owned and operated by the Tribe, documents that demonstrate the technical capability of the Lessee or Lessee's agent to construct, operate, maintain, and Terminate the proposed project and the Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
  - (9) A preliminary plan of development that describes the type and location of any improvements the Lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;
  - (10) A description of the land under § 418;
  - (11) Information to assist the Designated Official's and Tribal Council's evaluation of the factors in this Act; and
  - (12) If the Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Tribal entity, information such as organizational documents, certificates, filing records, and resolutions that

demonstrates that:

- (i) The representative has authority to execute a Lease;
  - (ii) The Lease will be enforceable against the Lessee; and
  - (iii) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.
- (b) If items (3), (4), (6) or (7) are not available at the time of Lease Approval, the Lease may be approved subject to meeting those conditions.

§ 439 *[Reserved]*.

§ 440 *What is the Approval process for a business Lease?*

- (a) Upon receiving a business Lease application package, the Designated Official will review the package for compliance with this Act. Where applicable, the Designated Official will conduct necessary measures under this Act, including but not limited to Environmental Review and valuation. Once the Designated Official conducts the compliance review and determines that the Lease application package is complete, the Designated Official will submit the business Lease application package to the Tribal Council for Approval or disapproval of the Lease.
- (b) The Designated Official will notify the prospective Lessee within sixty (60) Days whether the business Lease application package is or is not complete. A complete application package includes all the information and supporting documents required under this Act, including but not limited to Environmental Review documentation and valuation documentation, where applicable.
- (c) If the business Lease application package is not complete, the Designated Official's letter must identify all the missing information or documents required for a complete application package. If the Designated Official does not respond to the submission of a business Lease application package, the parties may take action under § 463.
- (d) If the business Lease application package is complete, the Designated Official will notify the parties of the date of its receipt. Within sixty (60) Days of the receipt date, the Designated Official will submit the business Lease application package to the Tribal Council for Approval or disapproval of the Lease, return the package for revision, or inform the parties in writing that he or she needs additional review time. If the Designated Official informs the parties in writing that he or she needs additional time, then:
  - (1) The Designated Official's letter informing the parties that he or she needs additional review time must identify the Designated Official's initial concerns and invite the prospective Lessee to respond within fifteen (15) Days of the date of the letter.

- (2) The Designated Official has thirty (30) Days from the due date of the prospective Lessees' response to the Designated Official's letter described in § 440(d)(1) above to submit the package to the Tribal Council for Approval or disapproval of the Lease.
  - (3) The Designated Official has thirty (30) Days from the date of receipt of a complete revised business Lease application package in response to the Designated Official's letter described in § 440(d)(1) above to submit the revised package to the Tribal Council for Approval or disapproval of the Lease.
- (e) If the Designated Official does not meet the deadlines in this section, then the parties may take appropriate action under § 463.
- (f) Upon receiving the business Lease application package from the Designated Official and before approving a business Lease, the Tribal Council must determine that the Lease is in the Best Interest of the Tribe. In making that determination, the Tribal Council will:
- (1) Review the Lease and supporting documents;
  - (2) Consider the Designated Official's findings regarding potential environmental impacts and ensure compliance with all applicable environmental laws, land-use laws, and ordinances;
  - (3) Require any Lease modifications or mitigation measures necessary to satisfy any requirements, including Chapter G and any other Federal or Tribal land-use requirements; and
  - (4) Have an opportunity to hear recommendations regarding Approval or disapproval from the Designated Official, based on the Designated Official's review of the Lease package for compliance with this Act.
- (g) The Tribal Council will approve or disapprove the business Lease package by resolution and, if applicable, the resolution will meet the requirements of § 420(a), § 426(b), and § 428(a).
- (h) The Designated Official will provide any Lease Approval or disapproval and the basis for the Tribal Council's determination, along with notification of any appeal rights under Chapter H of this Act, in writing to the parties to the Lease.
- (i) The Designated Official will provide approved business Leases on Tribal Land to the Lessee.

*§ 441 How will the Tribal Council decide whether to approve a business Lease?*

- (a) The Tribal Council in its discretion may approve a business Lease if:

- (1) The required Consents have been obtained from the parties to the Lease;
- (2) The requirements of this Act have been met; or
- (3) The Tribal Council finds that Approval serves the Best Interests of the Tribe.

*§ 442 When will a business Lease be effective?*

- (a) A business Lease may become effective on the date that the Tribal Council approves the Lease, even if an appeal is filed under Chapter H of this Act.
- (b) The Lease may specify a date on which the obligations between the parties to the business Lease are triggered. Such date may be before or after the Approval date under paragraph (a) of this section.

*§ 443 Must a business Lease Document be recorded?*

- (a) A memorandum of Lease for all Leases, amendments, renewals, subleases & Leasehold Mortgages that excludes confidential business and financial terms must be recorded in the Tribe's Land Authority.
- (b) The Designated Official will record the Lease memorandum document within five (5) Business Days immediately following the date of Tribal Council Approval.
- (c) If the Tribal Council's Approval of an Assignment or sublease is not required, the parties must record the Assignment or sublease in the Land Authority.
- (d) All Leases, amendments, renewals, subleases & Leasehold Mortgages must be recorded at the LTRO.

*§ 444 Will the Tribe require an Appeal Bond for an appeal of a decision on a business Lease document?*

- (a) If a party appeals the Designated Official's determination of a package's noncompliance with this Act or determination of a package's incompleteness for a Lease, Assignment, amendment, or Sublease, the Tribal Council shall determine whether to require the appellant to post an Appeal Bond in an amount reasonably estimating any damage to the Tribe from deferring any action pending appeal. The Tribe will not require an Appeal Bond:
  - (1) For an appeal of a decision on a Leasehold Mortgage; or
  - (2) If the Tribe is a party to the appeal and requests a waiver of the Appeal Bond.
- (b) The appellant may not appeal the Appeal Bond decision. The appellant may, however, request that the Tribal Council reconsider the bond decision, based on extraordinary

circumstances. Any reconsideration decision is final.

## Amendments

### *§ 445 May the parties amend a business Lease?*

- (a) The parties may amend a business Lease by obtaining:
  - (1) The lessor's and Lessee's signatures on the amended Lease;
  - (2) The Tribal Council's Consent under the requirements in § 446; and
  - (3) The Tribal Council's Approval of the amendment under § 447 and § 448.

### *§ 446 What are the Consent requirements for an amendment to a business Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed amendment; and
- (b) Tribal Council Consent to an amendment of a business Lease is required for the amendment to be effective.

### *§ 447 What is the Approval process for an amendment to a business Lease?*

- (a) When the Designated Official receives a written amendment that meets the requirements of this Chapter, they will notify the parties of the date he or she receives it. The Designated Official has thirty (30) Days from receipt of the amendment, proof of required Consents, and required documentation to submit the amendment to the Tribal Council to approve or disapprove the amendment or inform the parties in writing that he or she needs additional review time. The Tribal Council's determination whether to approve the amendment will be by resolution and will state the basis for Approval or disapproval.
- (b) The Designated Official's letter informing the parties that he or she needs additional review time must identify their initial concerns and invite the parties to respond within fifteen (15) Days of the date of the letter. The Designated Official has thirty (30) Days from the due date of the parties' response to the Designated Official's letter described in this paragraph to submit the package to the Tribal Council for Approval or disapproval.
- (c) Unless the Lease provides otherwise, provisions of the amendment that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.



*§ 448 How will the Tribal Council decide whether to approve an amendment to a business Lease?*

- (a) The Tribal Council may disapprove a business Lease amendment if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The Lessee is in Violation of the Lease;
  - (4) The requirements of this Chapter have not been met; or
  - (5) The Tribal Council finds that Approval serves the Best Interests of the Tribe.

#### Assignments

*§ 449 May a Lessee assign a business Lease?*

- (a) A Lessee may assign a business Lease meeting the Consent requirements in § 450 by obtaining the Tribal Council's Approval of the Assignment under § 451 and § 452, or by meeting the conditions in paragraphs (b) or (c) of this section.
- (b) Where provided in the Lease, the Lessee may assign the Lease to the following without meeting Consent requirements or obtaining the Tribal Council's Approval of the Assignment if the Lessee notifies the Designated Official of the Assignment within thirty (30) Days after it is executed:
  - (1) Not more than three (3) distinct legal entities specified in the Lease; or
  - (2) The Lessee's wholly owned subsidiaries.
- (c) The Lessee may assign the Lease without Tribal Council Approval or meeting Consent requirements if the assignee is a Leasehold Mortgagee or its designee acquiring the Lease through foreclosure;
- (d) All assignees must agree in writing to assume all the obligations and conditions of the Lease and that any transfer of the Lease will be in accordance with applicable law.

*§ 450 What are the Consent requirements for an Assignment of a business Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Assignment.
- (b) Except as provided in § 449, the Tribal Council must Consent to an Assignment of a

business Lease for the Assignment to be effective.

- (c) The Lessee must obtain the Consent of the holders of any bonds or mortgages.

*§ 451 What is the Approval process for an Assignment of a business Lease?*

- (a) When the Designated Official receives an Assignment that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If Tribal Council Approval is required, the Designated Official has thirty (30) Days from receipt of the Assignment, proof of required Consents, and required documentation to submit the Assignment package to the Tribal Council for Approval or disapproval of the Assignment. The Tribal Council's determination whether to approve the Assignment will be by resolution and will state the basis for Approval or disapproval.
- (b) If the Designated Official does not meet the deadline in this section, the Lessee or Tribe may take appropriate action under § 463.

*§ 452 How will the Tribal Council decide whether to approve an Assignment of a business Lease?*

- (a) The Tribal Council may disapprove an Assignment of a business Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The Lessee is in Violation of the Lease;
  - (4) The assignee does not agree to be bound by the terms of the Lease;
  - (5) The requirements of this Chapter have not been met; or
  - (6) The Tribal Council finds a compelling reason to withhold Approval to protect the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council may consider whether:
  - (1) The value of any part of the Leased Premises not covered by the Assignment would be adversely affected; and
  - (2) If a security is required, the assignee has posted the security and provided supporting documents that demonstrate that:
    - (i) The Lease will be enforceable against the assignee; and

- (ii) The assignee will be able to perform its obligations under the Lease or Assignment.

## Subleases

### *§ 453 May a Lessee Sublease a business Lease?*

- (a) A Lessee may Sublease a business Lease by meeting the Consent requirements in § 454 and obtaining Approval of the Sublease under § 455 and § 456, or by meeting the conditions in paragraph (b) of this section.
- (b) Where the Sublease is part of a commercial development or residential development, the Lessee may sublease without meeting Consent requirements or obtaining Tribal Council Approval of the sublease if:
  - (1) The Lease provides for subleasing without meeting Consent requirements or obtaining Tribal Council Approval;
  - (2) The sublease does not relieve the Lessee or sublessor of any liability; and
  - (3) The parties provide the Designated Official with a copy of the sublease within thirty (30) Days after it is executed.

### *§ 454 What are the Consent requirements for a sublease of a business Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Sublease.
- (b) Except as provided in § 453, the Tribal Council must Consent to a sublease of a business Lease for the sublease to be effective.

### *§ 455 What is the Approval process for a sublease of a business Lease?*

- (a) When the Designated Official receives a sublease that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If the Tribal Council's Approval is required, the Designated Official has thirty (30) Days from receipt of the Sublease, proof of required Consents, and required documentation to review the sublease package for compliance with this Act and to submit the sublease application package to the Tribal Council for Approval or disapproval, or to inform the parties in writing that the Designated Official needs additional review time. The Tribal Council's determination whether to approve the sublease will be by resolution and will state the basis for Approval or disapproval.
- (b) The Designated Official's letter informing the parties that he or she needs additional review time must identify any initial concerns and invite the parties to respond within

fifteen (15) Days of the date of the letter. The Designated Official has thirty (30) Days from the due date of the parties' response to the Designated Official's letter described in this paragraph to submit the sublease package to the Tribal Council for Approval or disapproval.

- (c) Unless the Lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

*§ 456 How will the Tribal Council decide whether to approve a sublease of a business Lease?*

- (a) The Tribal Council may disapprove a sublease of a business Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The Lessee is in Violation of the Lease;
  - (4) The Lessee will not remain liable under the Lease;
  - (5) The requirements of this Chapter have not been met; or
  - (6) The Tribal Council finds a compelling reason to withhold Approval to protect the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council may consider whether the value of any part of the Leased Premises not covered by the sublease would be adversely affected.

Leasehold Mortgages

*§ 457 May a Lessee mortgage a business Lease?*

- (a) A Lessee may mortgage a business Lease by meeting the Consent requirements in § 458 and obtaining Approval of the Leasehold Mortgage under § 459 and § 460.
- (b) When an approved mortgage of the Leasehold interest is foreclosed on, § 449(c) governs and Tribal Council Approval is not required.
- (c) In no event shall a Leasehold Mortgage exceed one hundred percent (100%) of the total Leasehold value.

*§ 458 What are the Consent requirements for a Leasehold Mortgage of a business Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Leasehold Mortgage.
- (b) The Tribal Council must Consent to a Leasehold Mortgage of a business Lease for the Leasehold Mortgage to be effective.

*§ 459 What is the Approval process for a Leasehold Mortgage of a business Lease?*

- (a) When the Designated Official receives a Leasehold Mortgage application that meets the requirements of this Chapter, he or she will notify the parties of the date he or she received it. The Designated Official has thirty (30) Days from receipt of the executed Leasehold Mortgage, proof of required Consents, and required documentation to submit the Leasehold Mortgage application package to the Tribal Council for Approval or disapproval of the Leasehold Mortgage. The Tribal Council's determination whether to approve the Leasehold Mortgage will be by resolution and will state the basis for Approval or disapproval.
- (b) If the Designated Official does not meet the deadline in this section, the Lessee may take appropriate action under § 463.

*§ 460 How will the Tribal Council decide whether to approve a Leasehold Mortgage of a business Lease?*

- (a) The Tribal Council may disapprove a Leasehold Mortgage of a business Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The requirements of this Chapter have not been met; or
  - (4) The Tribal Council finds that Approval serves the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(4) of this section, the Tribal Council may consider whether:
  - (1) The Leasehold Mortgage proceeds would be used for purposes unrelated to the Leased Premises; and
  - (2) The Leasehold Mortgage is limited to the Leasehold.

## Effectiveness, Compliance, and Enforcement

### *§ 461 When will an amendment, Assignment, Sublease, or Leasehold Mortgage of a business Lease be effective?*

- (a) An amendment, Assignment, Sublease, or Leasehold Mortgage of a business Lease will be effective when approved and executed by the proper parties, even if an appeal is filed under Chapter H of this Act, except that an Assignment that does not require Approval under § 449(b) or § 449(c) or a sublease that does not require Approval under § 453(b) becomes effective on the effective date specified in the Assignment or Sublease. If the Assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.
- (b) The Designated Official will provide copies of approved documents to the party requesting Approval to the Land Authority, and upon request, to other parties to the Lease document.
- (c) The Designated Official will provide copies of approved documents to the party requesting Approval, to the Tribe, and upon request, to other parties to the Lease document.

### *§ 462 What happens if the Tribal Council disapproves an amendment, Assignment, Sublease, or Leasehold Mortgage of a business Lease?*

If the Tribal Council disapproves an amendment, Assignment, Sublease, or Leasehold Mortgage of a business Lease, the Designated Official will notify the parties no later than three (3) Business Days after the Tribal Council's determination. All decisions by the Tribal Council to approve or disapprove an amendment, Assignment, Sublease, or Leasehold Mortgage of a business Lease are final.

### *§ 463 What happens if the Designated Official does not meet a deadline prescribed by this Chapter?*

- (a) If the Designated Official does not meet a deadline prescribed in this Chapter regarding a Lease, amendment, Assignment, Sublease, or Leasehold Mortgage, the parties may file a written notice to compel action with the President, unless the President is acting as the Designated Official in that instance, in which case the notice to compel action shall be filed with the Tribal Council.
- (b) The President or Tribal Council, as the case may be, has fifteen (15) Days from receiving the notice to order the Designated Official to perform the required action within the time set out in the order.
- (c) If the original notice under subsection (a) was filed with the President, the parties may file a written notice to compel action with the Tribal Council, in the event:

- (1) The President does not meet the deadline in paragraph (b) of this section; or
- (2) The Designated Official does not perform the required action within the time set by the President under paragraph (b) of this section.
- (d) If the notice by the parties was filed under paragraph (c), the Tribal Council has fifteen (15) Days from receiving the notice to order the Designated Official to perform the required action within the time set out in the order.
- (e) If the Designated Official does not perform the required action within the time set out in the order under paragraph (d), then the Tribal Council may designate another individual or individuals to serve as the Designated Official for the purpose of performing the required action within fifteen (15) Days from the expiration of the time set out in the order.

*§ 464 May the Designated Official investigate compliance with a business Lease?*

- (a) The Designated Official and the Secretary at their discretion may enter the Leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Tribal Law and applicable Lease documents, to protect the interests of the Tribe and to determine whether the Lessee is in compliance with the requirements of the Lease.
- (b) If the Designated Official determines that a specific Lease Violation has likely occurred, the Designated Official will promptly initiate an appropriate investigation. The Designated Official may also provide notice to the BIA pursuant to this Act.

*§ 465 May a business Lease provide for notices, remedies, and opportunities to cure if there is a Violation?*

A business Lease may identify the notices, remedies, and opportunities to cure in event of breach, that Lease Violations will be addressed by a process set out in § 466 and § 467, and that Lease disputes will be addressed by the Tribal Court, by the Tribal Council, or through an alternative dispute resolution method.

*§ 466 What will the Designated Official do about a Violation of a business Lease?*

- (a) In the absence of actions or proceedings described in § 465, the Designated Official will follow the procedures in paragraphs (b) and (c) of this section.
- (b) If the Designated Official determines there has been a Violation of the conditions of a business Lease, other than a Violation of payment provisions covered by paragraph (e) of this section, he or she will promptly send the Lessee and any Surety and Mortgagee a Notice of Violation by certified mail, return receipt requested.
- (c) The Designated Official will send a copy of the Notice of Violation to the President,

Tribal Council, and Land Authority. The Notice of Violation will advise the Lessee that, within ten (10) Business Days of the receipt of a Notice of Violation, the Lessee must:

- (1) Cure the Violation and notify the Designated Official in writing that the Violation has been cured;
  - (2) Submit a detailed written statement disputing the Designated Official's determination that a Violation has occurred; or
  - (3) Request additional time to cure the Violation in writing.
- (d) The Notice of Violation may order the Lessee to cease operations under the Lease after any cure period ends.
- (e) A Lessee's failure to pay compensation in the time and manner required by a business Lease is a Violation of the Lease, and the Designated Official will issue a Notice of Violation in accordance with this paragraph.
- (f) The Designated Official will send the Lessees and any Surety and Mortgagee a Notice of Violation by certified mail, return receipt requested, promptly following the date on which the payment was due, if the Lease requires that payments be made to the Tribe.
- (g) The Designated Official will send a copy of the Notice of Violation to the President, Tribal Council, and Land Authority.
- (h) The Notice of Violation will require the Lessee to provide adequate proof of payment.
- (i) The Lessee and its sureties will continue to be responsible for the obligations in the Lease until the Lease expires or is terminated or cancelled.

*§ 467 What will the Designated Official do if the Lessee does not cure a Violation of a business Lease on time?*

- (a) If the Lessee does not cure a Violation of a business Lease within the required time period, or provide adequate proof of payment as required in the Notice of Violation, the Designated Official will consult with the President, Tribal Council, and Land Authority, and determine whether:
- (1) The Tribe should cancel the Lease;
  - (2) The Tribe wishes to invoke any remedies available to it under the Lease;
  - (3) The Tribe should invoke other remedies available under the Lease or applicable law, including collection on any available security or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or



- (4) The Lessee should be granted additional time in which to cure the Violation.
- (b) Following consultation with the President, Tribal Council, and Land Authority, the Designated Official may take action to recover unpaid compensation and any associated late payment charges.
- (c) The Tribe does not have to cancel the Lease or give any further notice to the Lessee before taking action to recover unpaid compensation.
- (d) The Tribe may still take action to recover any unpaid compensation if it cancels the Lease.
- (e) If the Tribal Council decides to cancel the Lease, the Designated Official will send the Lessee and any Surety and Mortgagee a cancellation letter by certified mail, return receipt requested, within five (5) Business Days of the decision. The Designated Official will send a copy of the cancellation letter to the President, Tribal Council, and Land Authority. The cancellation letter will:
  - (1) Explain the grounds for cancellation;
  - (2) If applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease;
  - (3) Notify the Lessee of any right to appeal under Chapter H, including the possibility that the Tribal Council may require the Lessee to post an Appeal Bond;
  - (4) Order the Lessee to vacate the property within thirty-one (31) Days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
  - (5) Order the Lessee to take any other action the Tribal Council deems necessary to protect the Tribe.
- (f) The Tribe may invoke any other remedies available to it under the Lease, including collecting on any available security, and the Tribe may pursue any available remedies under Tribal Law.

*§ 468 Will late payment charges or special fees apply to delinquent payments due under a business Lease?*

- (a) Late payment charges will apply as specified in the Lease. The failure to pay these amounts will be treated as a Lease Violation.
- (b) The Designated Official may assess the following special fees to cover administrative costs incurred by the Tribe or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment

charges that must be paid to the Tribe under the Lease:

The Lessee will pay:	For:
\$100.00	Any dishonored check
\$50.00	Processing of each notice or demand letter
18% of balance due	Treasury processing following referral for collection of delinquent debt that is accepted by the BIA and Treasury

§ 469 [Reserved].

*§ 470 When will a termination of a business Lease be effective?*

A termination involving a business Lease pursuant to this Act will not be effective until thirty-one (31) Days after the Lessee receives the termination letter from the Designated Official, or forty-one (41) Days from the date the Designated Official mailed the letter, whichever is earlier.

*§ 471 What will the Tribe do if a Lessee remains in possession after a business Lease expires or is terminated?*

If a Lessee remains in possession after the expiration or termination of a business Lease, the Tribe may treat the unauthorized possession as a Trespass under applicable law. Unless the Tribe and the Holdover Lessee are engaged in good faith negotiations to obtain a new Lease, the Tribe may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

*§ 472 Will Appeal Bond requirements apply to cancellation decisions involving business Leases?*

- (a) Except as provided in paragraph (b) of this section, such Appeal Bond requirements as may be established by Tribal Council will apply to appeals from Lease cancellation decisions, provided that the amount of any such bond shall reasonably estimate any damage to the Tribe from deferring any action pending appeal.
- (b) The Lessee may not appeal the Appeal Bond decision. The Lessee may, however, request that the Tribal Council reconsider the Appeal Bond decision, based on extraordinary circumstances. Any reconsideration decision by the Tribal Council is final.

*§ 473 When will the Tribal Court issue a decision on an appeal regarding a business Lease?*

The Tribal Court will issue a decision on an appeal from a business leasing decision as described in Chapter H.

*§ 474 What happens if the Lessee abandons the Leased Premises?*

If a Lessee abandons the Leased Premises, the Tribe will treat the abandonment as a Violation of the Lease. The Lease may specify a period of non-use after which the Lease premises will be

considered abandoned. The Lessee shall be liable for all costs associated with removal of equipment, wastes, or other materials, restoration of the Leased Premises, and all associated reasonable attorneys' fees.

## Chapter E-Wind or Solar Resource Leases (WSRs)

### General Provisions Applicable to WSR Leases

#### *§ 501 What types of Leases does this Chapter cover?*

(a) This Chapter covers:

(1) Wind or solar resource (WSR) Leases, which are Leases that authorize possession of Tribal Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind or solar energy, or both, to generate and supply electricity:

(i) For resale on a for-profit or non-profit basis;

(ii) To a utility grid serving the public generally; or

(iii) To users within the local community (e.g., on and adjacent to Tribal Land).

(b) If the generation of electricity is solely to support a use approved under Chapter B, Agricultural Leases; Chapter C, Residential Leases; or Chapter D, Business Leases (including religious, educational, recreational, cultural, or other public purposes), for the same parcel of land, then the installation, operation and maintenance of instrumentation, facilities, and associated infrastructure are governed by Chapter B, C, or D of this Act, as appropriate.

#### *§ 502 Who must obtain a WSR Lease?*

Except as provided in § 106 of this Act, anyone seeking to possess Tribal Land to conduct activities associated with the development of wind or solar resources must obtain a WSR Lease.

#### *§ 503 Is there a model WSR Lease?*

(a) There is no model WSR Lease because of the need for flexibility in negotiating and writing WSR Leases; however, the Designated Official or Land Authority, as the case may be, may:

(1) Provide other guidance, such as checklists and sample Lease provisions, to assist in the Lease negotiation process; and

(2) Assist, upon request, in developing appropriate Lease provisions or in using Tribal Lease forms that conform to the requirements of this Chapter.

#### *§ 504-537 [Reserved].*

## WSR Leases

### *§ 538 What is the purpose of a WSR Lease?*

A WSR Lease authorizes a Lessee to possess Tribal Land to conduct activities related to the installation, operation, and maintenance of wind or solar energy resource development projects. Activities include installing instrumentation facilities and infrastructure associated with the generation, transmission, and storage of electricity and other related activities. Leases for biomass or waste-to-energy purposes are governed by Chapter D of this Act.

### *§ 539 [Reserved].*

### *§ 540 How long may the term of a WSR Lease run?*

- (a) A WSR Lease must provide for a definite Lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period.
- (b) The maximum term of a Lease approved under this Act may not exceed fifty (50) years, consisting of an initial term not to exceed twenty-five (25) years and one (1) renewal not to exceed twenty-five (25) years.
- (c) The Designated Official will defer to the Tribal Council's determination that the Lease term, including any renewal, is reasonable.
- (d) The Lease may not be extended by Holdover.

### *§ 541 What must the Lease include if it contains an option to renew?*

- (a) If the Lease provides for an option to renew, the Lease must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) Whether Tribe's Consent to the renewal is required;
  - (3) That the Lessee must provide notice of the renewal to the Designated Official and any sureties and Mortgagees;
  - (4) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (5) Any other conditions for renewal (e.g., that the Lessee not be in Violation of the Lease at the time of renewal).
- (b) The Designated Official will record a renewed Lease excluding any confidential business or financial terms with the Land Authority and the renewed Lease with the LTRO.

§ 542 *Are there mandatory provisions a WSR Lease must contain?*

(a) All WSR Leases must identify:

- (1) The tract or parcel of land being Leased;
- (2) The purpose of the Lease and authorized uses of the Leased Premises;
- (3) The parties to the Lease;
- (4) The term of the Lease;
- (5) The ownership of Permanent Improvements and the responsibility for constructing, operating, maintaining, and managing WSR equipment, roads, transmission lines, and related facilities under § 543 and 544;
- (6) Who is responsible for evaluating the Leased Premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission;
- (7) Payment requirements and late payment charges, including interest;
- (8) Due diligence requirements, under § 546;
- (9) Insurance requirements, under § 562; and
- (10) Bonding requirements under § 559. If a security is required, the Lease must state that the Lessee must obtain the Consent of the Surety for any legal instrument that directly affects their obligations and liabilities.

(b) Where the Designated Official executes a Lease on behalf of the Tribe or Lessee, the Lease must identify the party being represented and the authority under which the action is taken.

(c) All WSR Leases must include the following provisions:

- (1) The obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in trust or restricted status;
- (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leased Premises;
- (3) The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements;

- (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Designated Official to determine how to proceed and appropriate disposition of the items;
  - (5) The Designated Official and the Secretary at their discretion has the right, at any reasonable time during the term of the Lease and upon reasonable notice, in accordance with § 589, to enter the Leased Premises for inspection and to ensure compliance; and
  - (6) Upon the Designated Official's request, the parties must make appropriate records, reports, or information available for the Designated Official's inspection and duplication. The prospective Lessee's provision of confidential information may be conditioned upon the Designated Official agreeing to keep confidential any information with confidential, proprietary, or similar marking, and to exempt the confidential information from public release to the extent allowed by law. Except for confidential information that is not subject such an agreement, the Designated Official may, at their discretion, treat a Lessee's failure to cooperate with such request, provide data, or grant access to information or records as a Lease Violation.
- (d) The Lease must also contain the following provisions:
- (1) The Lessee holds the United States and the Tribe harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises; and
  - (2) The Lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of waste or hazardous materials, or the release or discharge of any waste or hazardous material from the Leased Premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the United States or Tribe for liability or cost arising from the United States' or Tribe's negligence or willful misconduct.
- (e) The Designated Official may treat any provision of a Lease Document that violates Federal law or Tribal Law as a Violation of the Lease.

*§ 543 May Permanent Improvements be made under a WSR Lease?*

- (a) A WSR Lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity, in accordance with § 117. These facilities and associated infrastructure are considered Permanent Improvements. A Resource Development Plan must be submitted for Approval with the Lease under § 563(a)(7).
- (b) If the parties agree to any of the following changes to the Resource Development Plan

after Lease Approval, they must submit the revised plan to the Designated Official for the file:

- (1) Location of Permanent Improvements;
- (2) Type of Permanent Improvements; or
- (3) Delay of ninety (90) Days or more in any phase of development.

*§ 544 How must a WSR Lease address ownership of Permanent Improvements?*

- (a) A WSR Lease must specify who will own any Permanent Improvements the Lessee installs during the Lease term and may specify under what conditions, if any, Permanent Improvements the Lessee constructs may be conveyed to the Tribe during or after the Lease term. In addition, the Lease must indicate whether each specific Permanent Improvement the Lessee installs will:
  - (1) Remain on the Leased Premises upon the expiration, termination, or cancellation of the Lease, in a condition satisfactory to the Tribe and become the property of the Tribe;
  - (2) Be removed within a time period specified in the Lease, at the Lessee's expense, with the Leased Premises to be restored as closely as possible to their condition before installation of the Permanent Improvements; or
  - (3) Be disposed of by other specified means.
- (b) A Lease that requires the Lessee to remove the Permanent Improvements must also provide the Tribe with an option to take possession of and title to the Permanent Improvements if the improvements are not removed within the specified time period.

*§ 545 How will the Designated Official enforce removal requirements in a WSR Lease?*

- (a) The Designated Official may take appropriate enforcement action to ensure removal of the Permanent Improvements and restoration of the premises at the Lessee's expense:
  - (1) In consultation with the Tribal Council; and
  - (2) Before or after expiration, termination, or cancellation of the Lease.
- (b) The Designated Official may collect and hold the security until removal and restoration are completed.

*§ 546 What requirements for due diligence must a WSR Lease include?*

- (a) A WSR Lease must include due diligence requirements that require the Lessee to:



- (1) Commence installation of energy facilities within two (2) years after the effective date of the Lease or consistent with a timeframe in the Resource Development Plan or an extension granted by the Tribal Council;
  - (2) If installation does not occur or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Designated Official and the Tribal Council with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation in support of an extension request;
  - (3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the Resource Development Plan; and
  - (4) Repair, place into service, or remove from the site within a time period specified in the Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the Lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).
- (b) Failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease under § 592.

*§ 547 How must a WSR Lease describe the land?*

- (a) A WSR Lease must describe the Leased Premises by reference to a private or public survey, if possible. If the land cannot be so described, the Lease must include one or more of the following:
- (1) A legal description;
  - (2) A survey-grade global positioning system description; or
  - (3) Another description prepared by a registered land surveyor that is sufficient to identify the Leased Premises.

*§ 548 May a WSR Lease allow compatible uses?*

The Lease may provide for the Tribe to use, or authorize others to use, portions of the Leased Premises for other uses compatible with the WSR Lease and consistent with the terms of the WSR Lease. This may include the right to Lease the premises for other compatible purposes. Any such use or authorization by the Tribe will not reduce or offset the monetary compensation for the WSR Lease.

## WSR Lease Monetary Compensation Requirements

### *§ 549 How much monetary compensation must be paid under a WSR Lease of Tribal Land?*

- (a) A WSR Lease of Tribal Land may allow for any payment negotiated by the Tribe, and the Designated Official will defer to the Tribal Council and not require a valuation if the Tribal Council submits a written resolution expressly stating that it:
  - (1) Finds the negotiated compensation is satisfactory to the Tribe;
  - (2) Waives valuation; and
  - (3) Has determined that accepting such negotiated compensation and waiving valuation is in the Best Interest of the Tribe.
- (b) The Tribal Council may request, in writing, that the Designated Official determine Fair Market Rental Value, in which case the Designated Official will use a valuation in accordance with § 551. After providing the Tribal Council with the Fair Market Rental Value, the Designated Official will defer to the Tribal Council's decision to allow for any payment amount negotiated by the Tribe.
- (c) If the conditions in paragraph (a) or (b) of this section are not met, the Designated Official will require that the Lease provide for Fair Market Rental Value based on a valuation in accordance with § 551.

### *§ 550 [Reserved].*

### *§ 551 How will the Designated Official determine Fair Market Rental Value for a WSR Lease?*

- (a) The Designated Official will use a market analysis, appraisal, or other appropriate valuation method to determine the Fair Market Rental Value before the Tribal Council approves a WSR Lease of Tribal Land.
- (b) The Designated Official will either:
  - (1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or
  - (2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Tribe or Lessee.
- (c) The Designated Official will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:
  - (1) Has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal

Foundation, or the Uniform Appraisal Standards for Federal Land Acquisitions and the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute to establish requirements and procedures for professional real property appraisal practice or a valuation method deemed appropriate and authorized by the Designated Official; and

(2) Complies with Tribal policies regarding appraisals, including third-party appraisals.

(d) The Tribe may use competitive bidding as a valuation method.

*§ 552 When are monetary compensation payments due under a WSR Lease?*

(a) A WSR Lease must specify the dates on which all payments are due.

(b) Unless the Lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the Lease, regardless of whether the Lessee receives an advance billing or other notice that a payment is due.

*§ 553 Must a WSR Lease specify who receives monetary compensation payments?*

(a) Under a WSR Lease, the Lessee will make payments directly to the Tribe and the Tribe shall produce documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.

(b) The Lease must include provisions for proof of payment upon BIA request.

(c) The Lessee must send direct payments to the parties and addresses specified in the Lease, unless the Lessee receives notice of a change of ownership or address.

(d) Unless the Lease provides otherwise, payments may not be made payable directly to anyone other than the Tribe.

(e) Direct payments must continue through the duration of the Lease.

*§ 554 What form of monetary compensation payment is acceptable under a WSR Lease?*

Payments made directly to the Tribe must be in a form of payment acceptable to the Tribe, including but not limited to wire transfer, direct deposit, or check.

*§ 555 May a WSR Lease provide for non-monetary or varying types of compensation?*

(a) A WSR Lease may provide for the following, subject to the conditions in paragraph (b) of this section:

- (1) Alternative forms of compensation, including but not limited to in-kind consideration and payments based on percentage of income; or
  - (2) Varying types of consideration at specific stages during the life of the Lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.
- (b) The Designated Official will defer to the Tribal Council's determination that the compensation in paragraph (a) of this section is in the Best Interest of the Tribe, if the Tribal Council submits a Tribal Council resolution or other Tribal Council authorization stating that it has determined the compensation in paragraph (a) of this section to be in its best interest.

*§ 556 Will the Designated Official notify a Lessee when a payment is due under a WSR Lease?*

The Designated Official may issue invoices to a Lessee in advance of the dates on which payments are due under a WSR Lease. The Lessee's obligation to make these payments in a timely manner will not be excused if invoices are not delivered or received.

*§ 557 Must a WSR Lease provide for compensation reviews or adjustments?*

- (a) For a WSR Lease of Tribal Land, unless the Lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the Tribal Council states in a resolution that it has determined that not having reviews or adjustments is in the Best Interest of the Tribe.
- (b) If the conditions in paragraph (a) of this section are not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the Lease. The Lease must specify:
  - (1) When adjustments take effect;
  - (2) Who can make adjustments;
  - (3) What the adjustments are based on; and
  - (4) How to resolve disputes arising from the adjustments.
- (c) When a review results in the need for adjustment of compensation, the Tribal Council must Consent to the adjustment in accordance with § 113, unless the Lease provides otherwise.

*§ 558 What other types of payments are required under a WSR Lease?*

- (a) The Lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Tribe, except as provided in § 116. The

Lessee must pay these amounts to the appropriate office at the Tribe.

- (b) If the Leased Premises are within an Indian irrigation project or drainage district, except as otherwise provided in 25 CFR Part 171, the Lessee must pay all applicable operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Designated Official will treat failure to make these payments as a Violation of the Lease.
- (c) Where the property is subject to at least one other Lease for another compatible use (including Leases not subject to this Act) the Lessees may agree among themselves how to allocate payment of the operation and maintenance charges.

### WSR Lease Bonding and Insurance

#### *§ 559 Must a Lessee provide a security for a WSR Lease?*

- (a) The Lessee must provide a security, except as provided in paragraph (g) of this section.
- (b) The security must be in an amount sufficient to secure the contractual obligations including:
  - (1) No less than:
    - (i) The highest annual rental specified in the Lease, if the compensation is paid annually;
    - (ii) If the compensation is not paid annually, another amount established by the Designated Official in consultation with the Tribal Council for Tribal Land; or
    - (iii) If the compensation is paid annually in advance, no security for rent shall be required.
  - (2) The installation of any required Permanent Improvements that were not installed by the timeframe required by the Lease;
  - (3) The operation and maintenance charges for any land located within an irrigation project; and
  - (4) The restoration and reclamation of the Leased Premises to their condition at the start of the Lease term, or some other specified condition or time frame set forth in the Lease.
- (c) The security must be deposited with the Designated Official and made payable only to the Tribe, and may not be modified without Tribal Council Approval.

- (d) The Lease must specify the conditions under which the Designated Official may adjust security requirements to reflect changing conditions, including consultation with the Tribal Council before adjustment.
- (e) The Designated Official may require that the Surety provide any supporting documents needed to show that the security will be enforceable, and that the Surety will be able to perform the guaranteed obligations.
- (f) The security instrument must require the Surety to provide notice to the Designated Official at least sixty (60) Days before canceling the security. This will allow the Designated Official to notify the Lessee of its obligation to provide a substitute security and require collection of the security before the cancellation date. Failure to provide a substitute Performance Bond or security is a Violation of the Lease.
- (g) The Designated Official may waive the requirement for a security if the Tribal Council determines a waiver is in the Tribe's best interest. The Designated Official will defer to the Tribal Council's determination that a waiver of the security is in the Tribe's best interest.

*§ 560 What forms of security are acceptable under a WSR Lease?*

- (a) The Designated Official will accept a Performance Bond or corporate guarantee only in one of the following forms:
  - (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (3) Negotiable Treasury securities;
  - (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury;  
or
  - (5) Corporate guarantees provided by a corporation that has an investment grade rating by Standard and Poor's or Moody's Investor Service comparable to those issued for non-Tribal energy projects acceptable to the Tribal Council.
- (b) The Designated Official may accept an alternative form of security approved by the Tribal Council that provides adequate protection for the Tribe, including but not limited to an escrow agreement and assigned savings account.
- (c) All forms of security must, if applicable:
  - (1) Indicate on their face that the Tribe's Approval is required for redemption;

- (2) Be accompanied by a statement granting full authority to the Tribe to make an immediate claim upon or sell them if the Lessee violates the terms of the Lease;
  - (3) Be irrevocable during the term of the security; and
  - (4) Be automatically renewable during the term of the Lease.
- (d) The Designated Official will not accept cash bonds.

*§ 561 What is the release process for a security under a WSR Lease?*

- (a) Upon expiration or termination of the Lease, the Lessee must ask the Tribe in writing to release the security.
- (b) Upon receiving the request under paragraph (a) of this section, the Designated Official will:
  - (1) Confirm with the Designated Official that the Lessee has complied with all Lease obligations; and
  - (2) Release the Performance Bond or alternative form of security to the Lessee unless the Designated Official determines that the bond or security must be redeemed to fulfill the contractual obligations.

*§ 562 Must a Lessee provide insurance for a WSR Lease?*

- (a) Except as provided in paragraph (d) of this section, a Lessee must provide insurance when necessary to protect the interests of the Tribe and in the amount sufficient to protect all insurable Permanent Improvements on the Leased Premises.
- (b) The insurance may include property, liability, and casualty insurance, depending on the Tribe's interests to be protected.
- (c) Both the Tribe and the United States must be identified as additional insured parties.
- (d) The Tribal Council may waive the requirement for insurance upon the request of the Designated Official, if a waiver is determined to be in the Best Interest of the Tribe by the Tribal Council, including if the Lease is for less than Fair Market Rental Value or Nominal Compensation. The Designated Official will defer to the Tribal Council's determination that a waiver is in the Tribe's best interest.

## WSR Lease Approval

### *§ 563 What documents are required for Tribal Council Approval of a WSR Lease?*

- (a) A Lessee must submit the following documents to the Designated Official for review and for presentation to Tribal Council for Approval of a WSR Lease:
- (1) A Lease negotiated by the Tribe and the Lessee that meets the requirements of this Act;
  - (2) A valuation, if required under § 549;
  - (3) Proof of insurance, if required under § 562;
  - (4) A Performance Bond or other security, if required under § 559;
  - (5) Statement from the appropriate Tribal authority that the proposed use is in conformance with applicable Tribal Law, if required by the Designated Official or Tribal Council;
  - (6) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and Tribal environmental and land-use requirements, including any documentation prepared under § 125 or required under Chapter G;
  - (7) A Resource Development Plan;
  - (8) A Restoration and Reclamation Plan (and any subsequent modifications to the plan), if appropriate;
  - (9) Where the Lessee is not an entity owned and operated by the Tribe, documents that demonstrate the technical capability of the Lessee or Lessee's agent to construct, operate, maintain, and Terminate the proposed project and the Lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
  - (10) A description of the land under § 547;
  - (11) If the Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
    - (i) The representative has authority to execute a Lease;
    - (ii) The Lease will be enforceable against the Lessee; and



(iii) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(b) If items (3), (4), (6) or (8) are not available at the time of Lease Approval, the Lease may be approved subject to meeting those conditions.

*§ 564 Will the Designated Official review a proposed WSR Lease before or during preparation of the Environmental Review documentation and valuation?*

The Designated Official will review the proposed WSR Lease for compliance with this Act after negotiation by the parties, before or during preparation of the Environmental Review documentation and any valuation. Within sixty (60) Days of receiving the proposed Lease, the Designated Official will provide an acknowledgement of the terms of the Lease and identify any provisions that, based on this acknowledgment review, would justify disapproval of the Lease, pending results of the Environmental Review and any valuation.

*§ 565 What is the Approval process for a WSR Lease?*

- (a) Upon receiving a WSR application package, the Designated Official will review the package for compliance with this Act. Where applicable, the Designated Official will conduct necessary measures under this Act, including but not limited to Environmental Review and valuation. Once the Designated Official conducts the compliance review and determines that the application package is complete, the Designated Official will submit the WSR application package to the Tribal Council for Tribal Council determination of Approval or disapproval of the Lease.
- (b) Upon receiving a WSR Lease package, the Designated Official will promptly notify the prospective Lessee within sixty (60) Days whether the package is or is not complete. A complete package includes all the information and supporting documents required under this Act, including but not limited to Environmental Review documentation and valuation documentation, where applicable.
- (c) If the WSR Lease application package is not complete, the Designated Official's letter will identify the missing information or documents required for a complete package. If the Designated Official does not respond to the submission of a WSR Lease application package, the parties may take action under § 588.
- (d) If the WSR Lease application package is complete, the Designated Official will notify the parties of the date of completeness. Within sixty (60) Days of the completeness date, the Designated Official will submit the WSR package to the Tribal Council for Approval or disapproval of the WSR, return the package for revision, or inform the prospective Lessee in writing that the Designated Official needs additional review time. If the Designated Official informs the prospective Lessee in writing that he or she needs additional time, then:

- (1) The Designated Official's letter informing the prospective Lessee that the Designated Official needs additional review time must identify the Designated Official's concerns and invite the prospective Lessee to respond within fifteen (15) Days of the date of the letter; and
- (2) The Designated Official has thirty (30) Days from the due date of the prospective Lessee's response to the Designated Official's letter described in (d)(1) above to submit the package to the Tribal Council for Approval or disapproval the Lease.
- (e) The Designated Official has thirty (30) Days from the date of completeness for the revised WSR Lease application in response to the Designated Official's letter described in (d)(1) above to submit the revised application package to the Tribal Council for Approval or disapproval the Lease.
- (f) If the Designated Official does not meet the deadlines in this section, then the parties may take appropriate action under § 588.
- (g) Upon receiving the WSR package from the Designated Official and before approving a WSR, the Tribal Council must determine that the Lease is in the Best Interest of the Tribe. In making that determination, the Tribal Council will:
  - (1) Review the Lease and supporting documents;
  - (2) Consider the Designated Official's findings regarding potential environmental impacts and compliance with this Act;
  - (3) Require any Lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or Tribal Land-use requirements; and
  - (4) Have opportunity to hear recommendations regarding Approval or disapproval from the Designated Official, based on the Designated Official's review of the Lease for compliance with this Act.
- (h) The Tribal Council will approve or disapprove the WSR Lease by written resolution which, if applicable, must meet the requirements of § 549(a), § 555(b), and § 557(a).
- (i) The Designated Official will provide any Lease Approval or disapproval and the basis for the determination, along with notification of any appeal rights under Chapter H, in writing to the parties to the Lease.
- (j) The Designated Official will provide approved WSR Leases on Tribal Land to the Lessee and provide a copy to the Land Authority and the LTRO.

*§ 566 How will the Tribal Council decide whether to approve a WSR Lease?*

- (a) The Tribal Council may approve a WSR Lease if:

- (1) The required Consents have been obtained from the parties to the Lease;
- (2) The requirements of this Act have been met; or
- (3) The Tribal Council finds that Approval serves the Best Interests of the Tribe.

*§ 567 When will a WSR Lease be effective?*

- (a) A WSR Lease may become effective on the date that the Tribal Council approves the Lease, even if an appeal is filed under Chapter H of this Act.
- (b) The Lease may specify a date on which the obligations between the parties to the Lease are triggered. Such date may be before or after the Approval date under paragraph (a) of this section.

*§ 568 Must a WSR Lease Document be recorded?*

- (a) A memorandum of the WSR Lease Document that excludes confidential business and financial terms must be recorded in the Land Authority and LTRO.
- (b) The Designated Official will record the Lease memorandum document within five (5) Business Days immediately following the date of Tribal Council Approval.
- (c) If the Tribal Council's Approval of an Assignment or sublease is not required, the parties must record the Assignment or sublease in the Land Authority and LTRO.

*§ 569 Will the Tribe require an Appeal Bond for an appeal of a decision on a WSR Lease document?*

- (a) If the Applicant appeals the Designated Official's determination of a WSR package's noncompliance with this Act or determination of a package's incompleteness for a Lease, Assignment amendment, or Sublease, the Tribal Council shall determine whether to require the appellant to post an Appeal Bond in an amount reasonably estimating any damage to the Tribe from deferring any action pending appeal. The Tribe will not require an Appeal Bond:
  - (1) For an appeal of a decision on a Leasehold Mortgage; or
  - (2) If the Tribe is a party to the appeal and requests a waiver of the Appeal Bond.
- (b) The appellant may not appeal the Appeal Bond decision. The appellant may, however, request that the Tribal Council reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final.

## WSR Lease Amendments

### *§ 570 May the parties amend a WSR Lease?*

- (a) The parties may amend a WSR Lease by obtaining:
  - (1) The lessor's and Lessee's signatures;
  - (2) The Tribal Council's Consent under the requirements in § 571; and
  - (3) The Tribal Council's Approval of the amendment under § 572 and § 573.

### *§ 571 What are the Consent requirements for an amendment to a WSR Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed amendment.
- (b) The Tribal Council must Consent to an amendment to a WSR Lease for the amendment to be effective.

### *§ 572 What is the Approval process for an amendment to a WSR Lease?*

- (a) When the Designated Official receives an amendment that meets the requirements of this Chapter, the Designated Official will notify the parties of the date of receipt. The Designated Official has thirty (30) Days from receipt of the executed amendment, proof of required Consents, and required documentation to submit the amendment to the Tribal Council to approve or disapprove the amendment or inform the parties in writing that the Designated Official needs additional review time. The Tribal Council's determination whether to approve the amendment will be in writing and will state the basis for Approval or disapproval.
- (b) The Designated Official's letter informing the prospective Lessee that the Designated Official needs additional review time must identify the Designated Official's initial concerns and invite the prospective Lessee to respond within fifteen (15) Days of the date of the letter. The Designated Official has thirty (30) Days from the due date of the prospective Lessee's response to the Designated Official's letter described in this paragraph to submit the amendment to the Tribal Council for Approval or disapproval.
- (c) Unless the Lease provides otherwise, provisions of the amendment that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

### *§ 573 How will the Tribal Council decide whether to approve an amendment to a WSR Lease?*

- (a) The Tribal Council may disapprove a WSR Lease amendment if one or more of the following is true:

- (1) The required Consents have not been obtained from the parties to the Lease;
- (2) The Lessee's Mortgagees or sureties have not Consented;
- (3) The Lessee is in Violation of the Lease;
- (4) The requirements of this Act have not been met; or
- (5) The Tribal Council finds that Approval serves the Best Interests of the Tribe.

#### WSR Lease Assignments

##### *§ 574 May a Lessee assign a WSR Lease?*

- (a) A Lessee may assign a WSR Lease by meeting the Consent requirements in § 575 and obtaining Tribal Council Approval of the Assignment under § 576 and § 577 or by meeting the conditions in paragraphs (b) or (c) of this section.
- (b) Where provided in the Lease, the Lessee may assign the Lease to the following without meeting Consent requirements or obtaining Tribal Council Approval of the Assignment if the Lessee notifies the Designated Official of the Assignment within thirty (30) Days after it is executed:
  - (1) Not more than three (3) distinct legal entities specified in the Lease; or
  - (2) The Lessee's wholly owned subsidiaries.
- (c) The Lessee may assign the Lease without Tribal Council Approval or meeting Consent requirements if:
  - (1) The assignee is a Leasehold Mortgagee or its designee, acquiring the Lease through foreclosure;
  - (2) The assignee agrees in writing to assume all obligations and conditions of the Lease; and
  - (3) The assignee agrees in writing that any transfer of the Lease will be in accordance with applicable law.

##### *§ 575 What are the Consent requirements for an Assignment of a WSR Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Assignment.
- (b) Except as provided in § 574, the Tribal Council must Consent to an Assignment of a

WSR Lease.

*§ 576 What is the Approval process for an Assignment of a WSR Lease?*

- (a) When the Designated Official receives an Assignment that meets the requirements of this Chapter, the Designated Official will notify the prospective Lessee of the date of receipt. If Tribal Council Approval is required, the Designated Official has thirty (30) Days from receipt of the Assignment, proof of required Consents, and required documentation to submit the Assignment to the Tribal Council to approve or disapprove the Assignment. The Tribal Council's determination whether to approve the Assignment will be in writing and will state the basis for Approval or disapproval.
- (b) If the Designated Official does not meet the deadlines in this section, the Lessee or Tribe may take appropriate action under § 588.

*§ 577 How will the Tribal Council decide whether to approve an Assignment of a WSR Lease?*

- (a) The Tribal Council may disapprove an Assignment of a WSR Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The Lessee is in Violation of the Lease;
  - (4) The assignee does not agree to be bound by the terms of the Lease;
  - (5) The requirements of this Chapter have not been met; or
  - (6) The Tribal Council finds a compelling reason to withhold Approval to protect the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council may consider whether:
  - (1) The value of any part of the Leased Premises not covered by the Assignment would be adversely affected; and
  - (2) If a Performance Bond is required, the assignee has posted the bond or security and has provided supporting documents that demonstrate that:
    - (i) The Lease will be enforceable against the assignee; and
    - (ii) The assignee will be able to perform its obligations under the Lease or Assignment.

## WSR Lease Subleases

### *§ 578 May a Lessee sublease a WSR Lease?*

- (a) A Lessee may sublease a WSR Lease by meeting the Consent requirements in § 579 and obtaining the Tribal Council's Approval of the sublease under § 580 and § 581, or by meeting the conditions in paragraph (b) of this section.
- (b) The Lessee may sublease without meeting Consent requirements or obtaining the Tribal Council's Approval of the Sublease, if:
  - (1) The Lease provides for subleasing without meeting Consent requirements or obtaining the Tribal Council's Approval;
  - (2) The sublease does not relieve the Lessee/sublessor of any liability; and
  - (3) The parties provide the Designated Official with a copy of the sublease within thirty (30) Days after it is executed.

### *§ 579 What are the Consent requirements for a sublease of a WSR Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Sublease.
- (b) Except as provided in § 578, the Tribal Council must Consent to a sublease for the sublease to be effective.

### *§ 580 What is the Approval process for a sublease of a WSR Lease?*

- (a) When the Designated Official receives a sublease that meets the requirements of this Chapter, he or she will notify the parties to the sublease of the date he or she receives it. If the Tribal Council's Approval is required, the Designated Official has thirty (30) Days from receipt of the Sublease, proof of required Consents, and required documentation to submit the sublease package to the Tribal Council to approve or disapprove the sublease or inform the parties in writing that he or she needs additional review time. The Tribal Council's determination whether to approve the sublease will be by resolution and will state the basis for Approval or disapproval.
- (b) The Designated Official's letter informing the parties to the sublease that he or she needs additional review time must identify any initial concerns and invite the parties to respond within fifteen (15) Days of the date of the letter. The Designated Official has thirty (30) Days from the due date of the parties' response to the Designated Official's letter described in this paragraph to submit the sublease package to the Tribal Council for Approval or disapproval.

- (c) Unless the Lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

*§ 581 How will the Tribal Council decide whether to approve a sublease of a WSR Lease?*

- (a) The Tribal Council may disapprove a sublease of a WSR Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The Lessee is in Violation of the Lease;
  - (4) The Lessee will not remain liable under the Lease; and
  - (5) The requirements of this Chapter have not been met; or
  - (6) The Tribal Council finds a compelling reason to withhold Approval to protect the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council may consider whether the value of any part of the Leased Premises not covered by the sublease would be adversely affected.

**WSR Leasehold Mortgages**

*§ 582 May a Lessee mortgage a WSR Lease?*

- (a) A Lessee may mortgage a WSR Lease by meeting the Consent requirements in § 583 and obtaining the Tribal Council's Approval of the Leasehold Mortgage under § 584 and § 585.
- (b) When an approved mortgage of the Leasehold interest is foreclosed on, § 574(c) governs and Tribal Council Approval is not required.
- (c) In no event shall a Leasehold Mortgage exceed one hundred percent (100%) of the total Leasehold value.

*§ 583 What are the Consent requirements for a Leasehold Mortgage of a WSR Lease?*

- (a) Unless the Lease provides otherwise, the Lessee must notify the Tribe of the proposed Leasehold Mortgage.
- (b) The Tribal Council must Consent to a Leasehold Mortgage for the Leasehold Mortgage



to be effective.

*§ 584 What is the Approval process for a Leasehold Mortgage of a WSR Lease?*

- (a) When the Designated Official receives a Leasehold Mortgage that meets the requirements of this Chapter, the Designated Official will notify the parties to the mortgage of the date of receipt. The Designated Official has twenty (20) Days from receipt of the executed Leasehold Mortgage, proof of required Consents, and required documentation to submit the Leasehold Mortgage package to the Tribal Council to approve or disapprove the Leasehold Mortgage. The Tribal Council's determination whether to approve the Leasehold Mortgage will be in writing and will state the basis for Approval or disapproval.
- (b) If the Designated Official does not meet the deadline in this section, the Lessee may take appropriate action under § 588.

*§ 585 How will the Tribal Council decide whether to approve a Leasehold Mortgage of a WSR Lease?*

- (a) The Tribal Council may disapprove a Leasehold Mortgage of a WSR Lease if one or more of the following is true:
  - (1) The required Consents have not been obtained from the parties to the Lease;
  - (2) The Lessee's Mortgagees or sureties have not Consented;
  - (3) The requirements of this Act have not been met; or
  - (4) The Tribal Council finds a compelling reason to withhold Approval to protect the Best Interests of the Tribe.
- (b) In making the finding required by paragraph (a)(4) of this section, the Tribal Council may consider whether:
  - (1) The Leasehold Mortgage proceeds would be used for purposes unrelated to the Leased Premises; and
  - (2) The Leasehold Mortgage is limited to the Leasehold.

**WSR Lease Effectiveness Compliance and Enforcement**

*§ 586 When will an amendment, Assignment, Sublease, or Leasehold Mortgage of a WSR Lease be effective?*

- (a) An amendment, Assignment, Sublease, or Leasehold Mortgage of a WSR Lease will be effective when approved, even if an appeal is filed under Chapter H, except that an

Assignment that does not require Tribal Council Approval under § 574(b) or a Sublease that does not require Tribal Council Approval under § 578(b) becomes effective on the effective date specified in the Assignment or Sublease.

- (b) If the Assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.
- (c) The Designated Official will provide copies of approved documents to the party requesting Approval, to the Tribe, and upon request, to other parties to the Lease document.

*§ 587 What happens if the Tribal Council disapproves an amendment, Assignment, Sublease, or Leasehold Mortgage of a WSR Lease?*

If the Tribal Council disapproves an amendment, Assignment, Sublease, or Leasehold Mortgage of a WSR Lease, the Designated Official will notify the parties no later than three (3) Business Days after the Tribal Council's determination. All decisions by the Tribal Council to approve or disapprove an amendment, Assignment, Sublease, or Leasehold Mortgage of a WSR Lease are final.

*§ 588 What happens if the Designated Official does not meet a deadline for issuing a decision on a Lease document?*

- (a) If the Designated Official does not meet a deadline prescribed in this Chapter regarding a Lease, amendment, Assignment, Sublease, or Leasehold Mortgage, the parties may file a written notice to compel action with the President, unless the President is acting as the Designated Official in that instance, in which case the notice to compel action shall be filed with the Tribal Council.
- (b) The President or Tribal Council, as the case may be, has fifteen (15) Days from receiving the notice to order the Designated Official to perform the required action within the time set out in the order.
- (c) If the original notice under paragraph (a) was filed with the President, the parties may file a written notice to compel action with the Tribal Council, in the event:
  - (1) The President does not meet the deadline in paragraph (b) of this section; or
  - (2) The Designated Official does not perform the required action within the time set by the President under paragraph (b) of this section.
- (d) If the notice by the parties was filed under paragraph (c), the Tribal Council has fifteen (15) Days from receiving the notice to order the Designated Official to perform the required action within the time set out in the order.
- (e) If the Designated Official does not perform the required action within the time set out in

the order under paragraph (d), then the Tribal Council may designate another individual or individuals to serve as the Designated Official for the purpose of performing the required action within fifteen (15) Days from the expiration of the time set out in the order.

*§ 589 May the Designated Official investigate compliance with a WSR Lease?*

- (a) The Designated Official and the Secretary at their discretion may enter the Leased Premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Tribal Law and applicable Lease documents, to protect the interests of the Tribe and to determine if the Lessee is in compliance with the requirements of the Lease.
- (b) If the Designated Official determines that a specific Lease Violation has occurred, the Designated Official will promptly initiate an appropriate investigation. The Designated Official, upon authorization from the Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. § 415(h)(7)(B).

*§ 590 May a WSR Lease provide for remedies if there is a Violation?*

A WSR Lease may identify the remedies in event of breach, provide that Lease Violations will be addressed by the Tribe, and provide that Lease disputes will be resolved by the Tribal Court, or by Tribal Council, or through an alternative dispute resolution method.

*§ 591 What will the Designated Official do about a Violation of a WSR Lease?*

- (a) In the absence of actions or proceedings described in § 590, the Designated Official will follow the procedures in paragraphs (b) and (c) of this section.
- (b) If the Designated Official determines there has been a Violation of the conditions of a WSR Lease, other than a Violation of payment provisions covered by paragraph (f) of this section, the Designated Official will promptly send the Lessee and any Surety and Mortgagee a Notice of Violation by certified mail, return receipt requested.
- (c) The Designated Official will send a copy of the Notice of Violation to the President, Tribal Council, and Land Authority.
- (d) The Notice of Violation will advise the Lessee that, within ten (10) Business Days of the receipt of a Notice of Violation, the Lessee must:
  - (1) Cure the Violation and notify the Designated Official in writing that the Violation has been cured;
  - (2) Submit a detailed written statement disputing the Designated Official's determination that a Violation has occurred; or

- (3) Request additional time to cure the Violation in writing.
- (e) The Notice of Violation may order the Lessee to cease operations under the Lease.
- (f) A Lessee's failure to pay compensation in the time and manner required by a WSR Lease is a Violation of the Lease, and the Designated Official will issue a Notice of Violation in accordance with this section.
- (g) The Designated Official will send the Lessees and any Surety and Mortgagee a Notice of Violation by certified mail, return receipt requested, promptly following the date on which payment was due, if the Lease requires that payments be made to the Tribe.
- (h) The Designated Official will send a copy of the Notice of Violation to the President, Tribal Council, and Land Authority.
- (i) The Notice of Violation will require the Lessee to provide adequate proof of payment.
- (j) The Lessee and its sureties will continue to be responsible for the obligations in the Lease until the Lease expires or is terminated or cancelled.

*§ 592 What will the Designated Official do if a Lessee does not cure a Violation of a WSR Lease on time?*

- (a) If the Lessee does not cure a Violation of a WSR Lease within the required time period, or provide adequate proof of payment as required in the Notice of Violation, the Designated Official will consult with the President, Tribal Council, and Land Authority, and determine whether:
  - (1) The Tribe should cancel the Lease;
  - (2) The Tribe wishes to invoke any remedies available under the Lease;
  - (3) The Tribe should invoke other remedies available under the Lease or applicable law, including collection on any available Performance Bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or
  - (4) The Lessee should be granted additional time in which to cure the Violation.
- (b) Following consultation with the President, Tribal Council, and Land Authority, the Designated Official may take action to recover unpaid compensation and any associated late payment charges.
- (c) The Tribe does not have to cancel the Lease or give any further notice to the Lessee before taking action to recover unpaid compensation.

- (d) The Tribe may still take action to recover any unpaid compensation if it cancels the Lease.
- (e) If the Tribal Council decides to cancel the Lease, the Designated Official will send the Lessee and any Surety and Mortgagee a cancellation letter by certified mail, return receipt requested, within five (5) Business Days of the decision. The Designated Official will send a copy of the cancellation letter to the President, Tribal Council, and Land Authority. The cancellation letter will:
  - (1) Explain the grounds for cancellation;
  - (2) If applicable, notify the Lessee of the amount of any unpaid compensation or late payment charges due under the Lease;
  - (3) Notify the Lessee of any right to appeal under Chapter H of this Act, if any, including the possibility that the Tribal Council may require the Lessee to post an Appeal Bond;
  - (4) Order the Lessee to vacate the property within thirty-one (31) Days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and
  - (5) Order the Lessee to take any other action the Designated Official deems necessary to protect the Tribe.
- (f) The Tribe may invoke any other remedies available under the Lease, including collecting on any available security and the Tribe may pursue any available remedies under Tribal Law.

*§ 593 Will late payment charges or special fees apply to delinquent payments due under a WSR Lease?*

- (a) Late payment charges will apply as specified in the Lease. The failure to pay these amounts will be treated as a Lease Violation.
- (b) The Designated Official may assess the fees to cover administrative costs incurred by the Tribe or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Tribe under the Lease.

*§ 594 How will payment rights relating to WSR Leases be allocated?*

The WSR Lease may allocate rights to payment for insurance proceeds, Trespass damages, compensation awards, settlement funds, and other payments between the Tribe and the Lessee. If not specified in the Lease, insurance policy, order, award, judgment, or other document, the Tribe will be entitled to receive these payments.

*§ 595 When will a termination of a WSR Lease be effective?*

A termination involving a WSR Lease will not be effective until thirty-one (31) Days after the Lessee receives a cancellation letter from the Designated Official, or forty-one (41) Days from the date the Designated Official mailed the letter, whichever is earlier.

*§ 596 What will the Tribe do if a Lessee remains in possession after a WSR Lease expires or is terminated or cancelled?*

If a Lessee remains in possession after the expiration, termination, or cancellation of a WSR Lease, the Tribe may treat the unauthorized possession as a Trespass under applicable law. Unless the Tribe and the Holdover Lessee are engaged in good faith negotiations to obtain a new Lease, the Tribe may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

*§ 597 Will Appeal Bond regulations apply to cancellation decisions involving WSR Leases?*

- (a) Except as provided in paragraph (b) of this section, such Appeal Bond requirements as may be established by the Tribal Council will apply to appeals from Lease cancellation decisions, provided that the amount of any such bond shall reasonably estimate any damage to the Tribe from deferring any action pending appeal.
- (b) The Lessee may not appeal the Appeal Bond decision. The Lessee may, however, request that the Tribal Council reconsider the Appeal Bond decision, based on extraordinary circumstances. Any reconsideration decision by the Tribal Council is final.

*§ 598 When will the Tribal Court issue a decision on an appeal from a WSR leasing decision?*

The Tribal Court will issue a decision on an appeal from a WSR leasing decision pursuant to Chapter H of this Act.

*§ 599 What happens if the Lessee abandons the Leased Premises?*

If a Lessee abandons the Leased Premises, the Tribe will treat the abandonment as a Violation of the Lease. The Lease may specify a period of non-use after which the Lease premises will be considered abandoned. The Lessee shall be liable for all costs associated with removal of equipment, wastes, or other materials, restoration of the Leased Premises, and all associated reasonable attorneys' fees.

## Chapter F-Records

### *§ 601 Who owns the records associated with this Act?*

- (a) Records are the property of the United States if they:
  - (1) Are made or received by the Tribe in the conduct of a Federal trust function under 25 U.S.C. §§ 450f et seq., including the operation of a trust program, and not pursuant to Tribal authority pursuant to 25 U.S.C. § 415(h); and evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function and not pursuant to Tribal authority under this Act.
- (b) Records not covered by paragraph (a) of this section that are made or received by the Tribe under this Act are the property of the Tribe.

### *§ 602 How must records associated with this Act be preserved?*

The Tribe should preserve the records identified in § 601(b) of this Act, for the time period authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. Chapter 33. It is the policy of the Tribe to diligently preserve records associated with this Act in order to adequately document essential transactions and furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

## Chapter G-Environmental Review

### *§ 700 What is the purpose of this Chapter?*

- (a) The Tribal Council finds, determines, and declares that:
  - (1) It is the policy of the Tribe to protect, preserve, and restore the natural Environment for the Northern Cheyenne people in accordance with the traditional Cheyenne way of life.
  - (2) The Tribe recognizes the utmost importance and direct connection of all life, both animate and inanimate, and further recognizes the Cheyenne traditional philosophy that all of creation is spiritually connected to the environment.
  - (3) The Tribe seeks to protect the environment, including the land, air, water, minerals, and all living things on or directly affected by the use and development of lands on the Northern Cheyenne Reservation. The Northern Cheyenne people have retained sovereign right to use and enjoy the Northern Cheyenne Reservation, and to govern its use. The Tribe places primary importance on the protection of these environmental resources for the benefit of Tribal members and its future generations.
  - (4) The Tribe views cultural resources as part of the environment, and seeks to protect, preserve, and identify cultural resources to better understand and celebrate Cheyenne history, culture, and religion.
  - (5) The Tribe recognizes that development activities on the Reservation are necessary to create a strong economy to the benefit of the Tribe as a whole, provide jobs for Tribal members, and enhance Tribal sovereignty, and further recognizes that such development may impact environmental and cultural resources on the Reservation.
- (b) The purpose of this Chapter is to encourage the use and development of the Reservation in ways that are compatible with or enhance environmental protection, preservation, and restoration to the maximum extent reasonably possible.
- (c) The Tribe seeks to ensure that Tribal authorization of Leases will be informed by careful analysis of likely environmental impacts, consideration of input of Tribal members, consideration of less impactful alternatives where appropriate, and imposition of mitigation measures where necessary.
- (d) This Chapter constitutes both procedural and substantive authority. The Tribal Council, through its delegated powers, may impose reasonable mitigation to reduce the environmental impacts of a proposal, and may deny a proposal where it is determined that the likely environmental impacts of that proposal are overly severe.



§ 701 *What is the Environmental Review process and who carries it out?*

- (a) The Environmental Review process is the process by which the Tribe considers environmental impacts associated with development activities on the Reservation, and how to reduce or eliminate those impacts. The Environmental Review process shall be carried out using the procedure set forth below.
- (1) Proposal. An Applicant shall submit a description of the proposal to the Designated Official. The proposal must contain a description of the proposed activities and anticipated environmental impacts they would likely cause. The proposal description must identify the potentially impacted area; scope, nature, and duration of impacts reasonably likely to occur; and nature of the proposed activities in enough detail for the Designated Official to conduct an evaluation of potential environmental impacts.
  - (2) Development fee and costs. The standard fee for Lease application processing is \$1,000. The Tribal Council may impose additional fees associated with review and processing of a proposal under this Act. If a fee is required, payment shall be submitted along with the proposal. The Applicant may also be assessed reasonable costs incurred by the Tribal Historic Preservation Office, Tribal Department of Environmental Protection and Natural Resources, and other applicable Tribal agencies.
  - (3) Consultation. Prior to making an initial determination, the Designated Official shall informally consult with Tribal agencies that regulate resources potentially impacted by the proposal, which may include the Tribal Historic Preservation Office, Cultural Commission, Land Authority, Housing Authority, and Department of Environment and Natural Resources.
  - (4) Initial determination. Within fourteen (14) Days, the Designated Official will provide one of the following written notices to the Applicant:
    - (i) The proposal is categorically exempt and does not require any further environmental review.
    - (ii) The Designated Official requires additional information from the Applicant regarding the proposal or its potential environmental impacts. Such requests for information must specifically identify the additional information required and the reason for the request. The additional information must be reasonably related to potential impacts of the proposal. Additional information may include formal written consultation with an affected Tribal agency.
    - (iii) The proposal does not have probable Significant Effects on the environment. This is deemed a determination of non-significance (DNS).
    - (iv) The proposal, with mitigation imposed, lacks probable Significant Effects on the environment. This is deemed a mitigated determination of non-significance

(MDNS). In this instance, the Applicant is urged to collaborate with the Designated Official to determine the most effective, lasting, and efficient mitigation measures possible. Mitigation measures must be specified in writing and must be enforceable by the Tribe. Where appropriate the Tribe may require a bond or other assurances as necessary to ensure mitigation performance.

- (v) The proposal has probable significant, adverse environmental impacts, requiring preparation of an environmental impact statement. This is deemed a determination of significance (DS).
- (5) Public Comment. Upon making the initial determination, the Designated Official shall make notice of the initial determination available to the Public, in methods including, but not limited to, the following:
  - (i) Posting the initial determination in a readily visible location at the offices of the Tribal Government and each of the other four districts of the Reservation;
  - (ii) Making the initial determination available to the Public at the Designated Official's offices; and
  - (iii) Publishing the initial determination on a readily accessible website.
- (6) For proposals that are not categorically exempt, the notice of initial determination must provide a Public Comment period of at least fourteen (14) Days, and information on how to submit Public Comments to the Designated Official.
- (7) The Designated Official, at their discretion, may hold a Public hearing to receive input on a proposal or initial determination.
- (8) The Designated Official shall consider all Public Comments received. Following completion of the Public Comment period, the Designated Official shall, within fourteen (14) Days, make a final environmental determination. The final determination must identify and respond to Public Comments received. If the Public Comments are numerous, extensive, or raise issues requiring further analysis, the Designated Official may reasonably extend the time until a final environmental determination and require further information or analysis from the Applicant.

*§ 702 What are the contents of the final environmental determination?*

- (a) Following Public Comment, the Designated Official shall make a final environmental determination, which specifies whether the Designated Official has made a final determination of non-significance, determination of significance, or mitigated determination of non-significance. The Designated Official shall prepare a written statement that is made available to the Public in the same manner set forth in § 701, in which the Designated Official:

- (1) Identifies and describes the proposal;
  - (2) Identifies the purpose and need for the proposal;
  - (3) Identifies any probable adverse Significant Effects of the proposal on the Environment;
  - (4) Considers whether there are any reasonable actions that may be taken to mitigate such Significant Effects on the Environment as part of the proposed Leasing Transaction;
  - (5) Determines whether any such actions should be required as a condition of a mitigated determination of non-significance;
  - (6) Summarizes and responds to Public Comment; and
  - (7) Identifies any changes in the proposal since the initial determination, including, but not limited to, mitigation measures provided.
- (b) The final environmental determination may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the Leasing Transaction and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.
- (c) The level of detail and depth of environmental impact analysis should normally be limited to the level of analysis reasonably necessary to determine whether there would be Significant Effects on the environment; if there are commercially reasonable ways to mitigate those impacts; and, in the case of a determination of significance, an explanation of why the impacts are not susceptible to mitigation.

*§ 703 What is the purpose of an environmental impact statement and when must it be prepared?*

- (a) An environmental impact statement must be prepared where there is a determination of significance. The purpose of an environmental impact statement is to allow the Designated Official, Tribal Council, Tribal members, and members of the Public to identify and evaluate the Significant Effects of a proposal on the Environment.
- (b) An environmental impact statement is not required for proposals that:
- (1) Will not result in any significant environmental impact;
  - (2) Are covered by an earlier Environmental Review document prepared not more than twenty-four (24) months earlier for a substantially identical Leasing Transaction on the same parcel as determined and documented by the Designated Official; or

- (3) Are categorically exempt under the definitions set forth in this Chapter.

*§ 704 Which Leases are categorically exempt from review under this Chapter?*

- (a) The list below sets forth classes of Leases that are categorically exempt from review under this Chapter.
  - (1) Leases that are subject to review under the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., including Leases that are subject to review under NEPA but deemed categorically excluded or exempt from NEPA review.
  - (2) Leases for single family homesites and associated improvements, including, but not limited to, construction of homes, outbuildings, access roads, and utility lines, which encompass five acres or less of contiguous lands, provided that such sites and associated improvements have no Significant Effects and do not adversely affect any Tribal cultural resources or historic properties and are in compliance with applicable Federal and Tribal Laws. Home construction may include up to four dwelling units, whether in a single building or up to four separate buildings.
  - (3) Renewal of Leases that do not entail a significant change in the scope of activities or likely environmental impact.
  - (4) Extraordinary circumstances may dictate or the Designated Official may decide that Environmental Review under this Chapter is required, even if a categorical exclusion would otherwise apply. If so, the Tribal official must set forth a reasonable basis in writing why the categorical exclusion is not appropriate in the specific instance.
- (b) The Tribal Council at its discretion may determine that a Lease that would otherwise be subject to review under this Chapter is categorically exempt.

*§ 705 Are mitigation measures and other conditions placed on a determination under this Chapter enforceable?*

Mitigation measures and other conditions set forth in writing as part of an MDNS or EIS, such as monitoring or adaptive management, are incorporated as enforceable terms of the associated Lease.

*§ 706-724 [Reserved].*

*§ 725 What are the contents of an environmental impact statement?*

- (a) An environmental impact statement may be prepared in any format useful to facilitate identification of Significant Effects to the environment, and appropriate Public participation.

- (b) In addition to the content set forth in § 702(a), the statement must contain analysis of at least two alternatives, including a “no-action alternative,” which shall consist of continuation of the status quo without the proposal, and an “action alternative,” which shall consist of an alternative means of accomplishing the purpose and need of the proposal with different or reduced environmental impacts.
- (c) An environmental impact statement must contain measures that reduce and mitigate significant environmental impacts to the extent reasonably possible. Mitigation included in a selected alternative shall be an enforceable condition of Approval and Lease (if applicable).
- (d) An environmental impact statement may be accompanied by or incorporate any other planning or decision-making document.

*§ 726 What is the process for consideration of an environmental impact statement?*

- (a) The Designated Official shall publish a draft environmental impact statement for Public Comment in the manner set forth in § 701, and provide a comment period of at least thirty (30) Days.
- (b) The Designated Official shall prepare a summary of Public Comments received and a response to those comments.
- (c) The Designated Official shall present the determination of significance, environmental impact statement, Public Comments received, and responses to Public Comment to the Tribal Council along with the proposal seeking authorization. The Tribal Council may deny Approval, authorize the proposal, or authorize an identified alternative.

*§ 727-729 [Reserved].*

*§ 730 May an environmental assessment prepared by another agency, entity, or person be adopted?*

- (a) The Designated Official shall seek to minimize the Tribal resources required for compliance with this Chapter by, to the extent feasible, requiring the Applicant to prepare analysis of environmental impacts and associated studies. The Designated Official must conduct independent review of all materials submitted and make independent environmental determinations.
- (b) The Designated Official may adopt an environmental assessment prepared in accordance with NEPA or an equivalent State or Tribal Law by another agency, entity, or person, provided that the Public Comment and response requirements are substantially complied with. If the Leasing Transaction involves funding from a Federal agency, the Tribe, acting through the Designated Official, shall have authority to rely on the Environmental Review process of the applicable Federal agency rather than any Tribal Environmental Review process under this Act.

- (c) The Tribe encourages other entities that may undertake Environmental Review relating to issuance of a Lease or associated funding or activities, including the Secretary and other federal agencies, to adopt the Tribe's Environmental Review decisions and analysis to the maximum extent practicable and lawful.

§ 731-734 [Reserved].

§ 735 *How is the Environmental Review process concluded?*

- (a) Upon review of the proposal and probable environmental impacts by the Designated Official, publication of the initial environmental determination, acceptance of Public Comments and delivery of the Tribe's response to such comments, publication of the final environmental determination, and publication of the environmental impact statement if required, the Environmental Review process concludes and the Designated Official may submit the proposed project documents and associated Lease to the Tribal Council for Approval or disapproval, subject to appeal of the Designated Official's determination under Chapter H below.
- (b) Following conclusion of environmental review, the Designated Official retains discretion to reopen Environmental Review when:
  - (1) Proposed changes to the actions under the Lease are reasonably likely to cause significant new environmental impacts; or
  - (2) New circumstances occur or information becomes available, which reveals that implementation of the Lease may result in significant environmental impacts that have not been considered.

## Chapter H-Appeals

### *§ 800 Who may appeal an action taken pursuant to this Act?*

- (a) An Applicant for a proposed Lease that is not approved pursuant to this Act due to Designated Official action or inaction may appeal to the Tribal Court on the grounds that the action or inaction violated the terms of this Act.
- (b) An Applicant for a proposed Lease that is not approved pursuant to this Act due to Tribal Council's determination not to approve the proposed Lease may appeal to the Tribal Court on the grounds that the Tribal Council's determination not to approve the proposed Lease is in Violation of the terms of this Act.
- (c) The Applicant may appeal to the Tribal Court the Designated Official's action or inaction resulting in the disapproval of the proposed Lease or the Tribal Council's determination not to approve the proposed Lease as either:
  - (d) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
  - (e) without reasonable support on the record before the Designated Official or Tribal Council, taken as a whole.
- (f) In any appeal of a decision made under this Act, the Designated Official's and the Tribal Council's determination of what constitutes the Best Interest of the Tribe receives substantial deference. If the Designated Official and the Tribal Council reach different determinations of what constitutes the Best Interest of the Tribe, the Tribal Council's determination receives substantial deference.
- (g) For purposes of this section, the term "lease" includes Leases, Lease amendments, Lease Assignments, and Lease subleases.

### *§ 801-804 [Reserved].*

### *§ 805 On what grounds may appeals be based?*

Appeals of actions taken under this Act may be taken solely by the persons identified at § 800(a) or (b) and may be based only upon the grounds described therein as applicable to such person's interest in the Leasing Transaction.

### *§ 806-809 [Reserved].*

### *§ 810 When and how must an appeal be filed?*

- (a) An appeal by a person identified in § 800(a) or (b) must be filed with the Tribal Court within fifteen (15) Days of the date the action appealed from was taken. Appeals shall be

by written notice filed with the Tribal Court and must be served in person or via first-class Mail upon the Tribal Council. Service is considered complete upon receipt of service. Failure to strictly comply with the provisions of this section shall result in dismissal of the appeal with prejudice. The appeal must describe in reasonable detail:

- (1) The interest of the appellant; and
- (2) The factual and legal grounds upon which such appeal is based.

*§ 811-814 [Reserved].*

*§ 815 How will the appeal be processed?*

The Tribal Court will process and decide the appeal pursuant to applicable Tribal Law and Tribal Court procedure.

*§ 816-819 [Reserved].*

*§ 820 How is a decision made on an appeal?*

The Tribal Court shall review the administrative record, briefs by the parties, and applicable law, and shall conduct a hearing before reaching a decision.

*§ 821-824 [Reserved].*

*§ 825 May an interested party seek further review of the decision on appeal?*

- (a) The Tribal Court's decision upon an appeal pursuant to § 800 shall be final and binding on all parties and for all purposes.
- (b) Only upon exhaustion of Tribal remedies as provided in this Chapter may a party to an appeal pursuant to § 800 seek Secretarial review of an appeal pursuant with § 800(a) or (b) regarding the Tribe's compliance with this Act in accordance with 25 U.S.C. § 415(h)(8). Any such Secretarial review shall be subject to all terms and conditions of 25 U.S.C. § 415(h)(8). The Tribe will respond to or cure any Secretarial determination of non-compliance in accordance with the procedures provided by 25 U.S.C. § 415(h)(8)(C).