



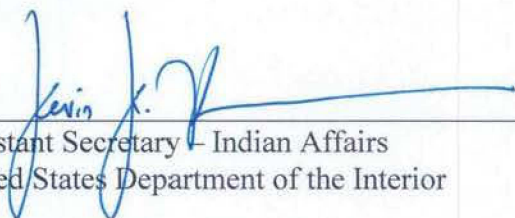
**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**SANTA ROSA BAND OF CAHUILLA INDIANS
BUSINESS SITE LEASING REGULATIONS OF 2013**

The attached Business Site Leasing Regulations of 2013, submitted by the Santa Rosa Band of Cahuilla Indians, prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of 42 pages and adopted by the Santa Rosa Band of Cahuilla Indians Tribal Council on the 18th day of August, 2013, are hereby approved.

Dated: 11/10/13


Assistant Secretary - Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**SANTA ROSA BAND OF
CAHUILLA INDIANS
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SANTA ROSA BAND OF CAHUILLA INDIANS

BUSINESS SITE LEASING REGULATIONS OF 2013

INTRODUCTION

The land of the Santa Rosa Reservation in Riverside County, California is located within the jurisdiction of an Indian Tribe --- the Santa Rosa Band of Cahuilla Indians. On July 30, 2012, the President signed into United States law a bill titled HR.205, the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (known as the HEARTH Act of 2012). On January 16, 2013, the United States Bureau of Indian Affairs (BIA) issued its National Policy Memorandum NPM-TRUS-29 entitled "Guidance for the Approval of Tribal Leasing Regulations under the Hearth Act." The Santa Rosa Band of Cahuilla Indians has made a decision to take advantage of the opportunity afforded by the HEARTH Act of 2012 to develop its own Business Site Leasing Regulations and to obtain the approval of the Regulations by the BIA so that the Tribe can issue its own business site leases for premises located in the Santa Rosa Reservation, streamline the current business site leasing process, and administer and enforce such leases for the benefit of the Tribe and to further its homeownership and social health and welfare programs on the Santa Rosa Reservation.

CHAPTER 100. GENERAL PROVISIONS.

101. **Title.** These Business Site Leasing Regulations shall be referred to as the *Santa Rosa Band of Cahuilla Indians Business Site Leasing Regulations of 2013*.

102. **Authority.** These Business Site Leasing Regulations have been developed, approved, and promulgated under the authority of Federal legislation, namely the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, 25 USC 415 *et seq.* (the "HEARTH Act of 2012").

103. **Effective Date.** These Business Site Leasing Regulations are effective as of August __, 2013, which is the date of approval thereof by the BIA. The effective date of any substantive changes to these Regulations after the initial or subsequent approval by the BIA shall be the date of approval thereof by the BIA.

104. **Purposes.** The purposes of these Business Site Leasing Regulations are to:

1. Recognize the authority of the Santa Rosa Band of Cahuilla Indians to issue business site leases, streamline the business site leasing process, and set forth details on management and enforcement of business site leases on the Santa Rosa Reservation.
2. Promote tribal control and self-determination over tribal land and other land through contracts and self-governance compacts entered into under the Indian Self-Determination and Educational Assistance Act, as amended, 25 U.S.C. section 450 *f et seq.*
3. Implement the HEARTH Act of 2012 on the Santa Rosa Reservation.

105. **Definitions.** For purposes of these Regulations, the following words and phrases shall have the meanings set forth in this section; provided, however, that additional definitions pertinent to the Environmental Review Process are found in Section 502 of these Regulations :

1. **Agricultural land** means Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community.
2. **Agricultural lease** means a lease of agricultural land for farming and/or grazing.
3. **Appeal bond** means a bond posted upon filing an appeal.
4. **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.
5. **BIA** means the Secretary of the Interior or the Bureau of Indian Affairs within the United States Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under 25 CFR 162.018.
6. **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.
7. **Business Site Lease** means a written contract between the Tribe and a lessee, whereby the lessee is granted a right to possess Tribal land for a business purpose that falls within the scope of leases specified in Sections 106 and 107 of these Regulations.
8. **Categorical Exclusion** means a category of activities for which an Environmental Assessment is not required, unless the categorically excluded activity may have a significant effect on the quality of the human environment.
9. **Fair market rental** means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.
10. **Fractionalized tract** means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.
11. **Government land** means any tract, or interest therein, in which the surface estate is owned and administered by the United States, not including Indian land.
12. **Holdover** means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.
13. **Indian**, for purposes of these Regulations, means a member of the Santa Rosa Band of Cahuilla Indians.

14. **Indian tribe**, for purposes of these Regulations, means the Santa Rosa Band of Cahuilla Indians.
15. **Interest**, when used in respect to Tribal land, means an ownership right to the surface estate of Tribal land.
16. **Lease** means a written contract between the Tribe and a lessee, whereby the lessee is granted a right to possess Tribal land, for a specified purpose and duration. The lessee's right to possess will limit the Tribe's right to possess the leased premises only to the extent provided in the lease.
17. **Lease Amendment** means an agreed-upon modification, revision or amendment of a lease.
18. **Lease document** means a lease, a lease amendment, a lease assignment, a sublease, a permit, or a leasehold mortgage.
19. **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.
20. **Lessee** means a person or entity who has acquired a legal right of possession to Tribal land by a lease or permit under these Regulations. A lessee may also be referred to herein as a "tenant."
21. **Lessor**, when used in respect to Tribal land, means the Tribe acting through its Tribal Council or Tribal General Counsel that grants lessees by a lease or permit a legal right of possession to Tribal land.
22. **LTRO** means the Land Titles and Records Office of the BIA.
23. **Mortgagee** means the holder of a leasehold mortgage.
24. **NEPA** means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*
25. **Nominal rental or nominal compensation** means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.
26. **Notice of violation** means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation.
27. **Office of the Special Trustee (OST)** means the Office of the Special Trustee for American Indians within the U.S. Department of the Interior that manages Tribal funds held in trust by the federal government on behalf of the Tribe.
28. **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.

29. **Permanent improvements** means buildings, other structures, and associated infrastructure attached to the leased premises.
30. **Permit** means a written, non-assignable agreement between the Tribe and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Tribal land for a specified purpose.
31. **Permittee** means a person or entity who has acquired a privilege to use Tribal land by a permit.
32. **Residential leases** means leases of undeveloped land or developed land (together with the improvements thereon) on Tribal land for single-family residences and housing for public purposes. The term "residential leases" as used in these Regulations does not apply to leases for single-family residential developments or multi-family developments which are considered included within the category of "business leases."
33. **Regulations** means these Business Site Leasing Regulations.
34. **Secretary** means the Secretary of the Interior.
35. **Sublease** means a written agreement by which the lessee grants to an individual or entity a right to possession of all or a portion of the leased premises no greater than that held by the lessee under the lease.
36. **Surety** means one who guarantees the performance of another.
37. **Tenant** means a person or entity who has acquired a legal right of possession to Tribal land by a lease or permit under these Regulations. A tenant is also referred to as a lessee.
38. **Termination** means action by the Tribe to end a lease.
39. **Trespass** means any unauthorized occupancy, use, or action on Tribal land.
40. **Tribal authorization** means a duly adopted tribal authorization, tribal ordinance, or other appropriate tribal document authorizing the specified action.
41. **Tribal Council** means the organizational entity of elected Tribal officials that functions in accordance with the Tribe's customs and traditions and Tribal governing documents in managing the day-to-day business activities of the Tribe and with general decision-making authority over Tribal business matters.
42. **Tribal General Council** means the organizational body composed of all the Tribe's members pursuant to the Tribe's governing documents and its customs and traditions that convenes from time to time to set general policies for the Tribe, to give direction to the Tribal Council, and to consider appeals of decisions made on business matters by the Tribal Council.

43. **Tribal land** means any tract, or interest therein, in which the surface estate is owned by the Santa Rosa Band of Cahuilla Indians.
44. **Tribal land assignment** means a contract or agreement that conveys to tribal members or wholly owned tribal corporations any rights for the use of Tribal lands, assigned by the Tribe in accordance with tribal laws or customs.
45. **Tribal law** means the body of non-Federal law that governs land and activities under the jurisdiction of the Tribe, including any ordinances and other enactments by the Tribe, Tribal court rulings, and Tribal common law.
46. **Tribe** means the Santa Rosa Band of Cahuilla Indians.
47. **Violation** means a failure to take an action, including payment of compensation, when required by the lease or permit, or to otherwise not comply with a term of the lease or the permit. This definition applies for purposes of the Tribe's enforcement of a lease or a permit under these Regulations no matter how "violation" or "default" is defined in the lease or the permit.
48. **Wind energy evaluation leases (WEELs)** mean short-term leases that authorize possession of Tribal land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.
49. **Wind and solar resource (WSR) leases** mean 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 and/or solar energy to generate and supply electricity.

106. **Scope of Leases and Permits Covered in the Regulations.** These Regulations cover leases and permits that authorize the possession of Tribal land on the Santa Rosa Reservation in Riverside County, California, except for the contracts excluded under Section 107 hereof. Where appropriate, these Regulations that specifically refer to leases will apply to permits that authorize the temporary, non-possessory use of Tribal land, not including: (1) Tribal Land Assignments and similar instruments authorizing temporary uses by Tribal members, in accordance with Tribal laws or custom; and (2) Trader's licenses. In addition, these Regulations may allow for mortgages of leasehold interests on Tribal land, but may not allow for mortgages of Tribal land.

107. **Limitations on Scope: Types of Leases Not Covered in the Regulations.**

1. **Mineral Resources Leases.** These Regulations shall not authorize or apply to leases for the exploration, development, or extraction of any mineral resources.
2. **No Leases of Individually Owned Indian Allotted Land.** These Regulations shall not apply to any lease of individually owned Indian allotted land.
3. **Existing Leases.** These Regulations shall not apply to any existing leases which were processed with and approved by the BIA prior to the Effective Date of these Regulations.

4. **Residential Leases.** These Regulations shall not apply to Residential leases as defined in Section 105.32 of these Regulations. The exclusion of Residential leases from the Regulations does not apply to leases for single-family residential developments or multi-family developments which are considered included within the business leases covered by these Regulations.
5. **Agricultural Leases.** These Regulations shall not apply to Agricultural Leases, which will continue to be covered by Section 162.100 *et seq.* of 25 CFR Ch.1.
6. **Grazing Permits.** These Regulations shall not apply to grazing permits, which will continue to be covered by Section 166 of 25 CFR Ch. 1.
7. **Timber Contracts.** These Regulations shall not apply to timber contracts, which will continue to be covered by Section 163 of 25 CFR Ch. 1.
8. **Management Contracts or Joint Venture Agreements.** These Regulations shall not apply to management contracts, joint venture agreements, or other encumbrances of Tribal Land which will continue to be covered by 25 U.S.C. Section 81, as amended.
9. **Easements or Rights-of-Way.** These Regulations shall not apply to easements or rights-of-way, which will continue to be covered by 25 CFR Section 169.

108. **What Other Laws Apply to Leases.**

1. **Federal Laws.** Leases granted or approved under these Regulations will be subject to federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these Regulations.
2. **Tribal Laws.** Tribal laws generally apply to land under the jurisdiction of the Tribe, except to the extent that the Tribal laws are inconsistent with the regulations found in 25 CFR Part 162 (Leases and Permits), or other applicable federal law. Tribal laws applicable to leases may supersede or modify the regulations found in Part 162 (Leases and Permits) of 25 CFR Ch. 1, so long as: (1) the Tribal laws are consistent with the Tribe's governing documents; (2) the Tribe has notified the BIA of the superseding or modifying effect of the Tribal laws; (3) the superseding or modifying of the regulation would not violate a federal statute or judicial decision, or conflict with the BIA's general trust responsibility under federal law; and (4) the superseding or modifying of the regulation applies only to tribal land.
3. **State Laws.** State laws may apply to lease disputes or define the remedies available to the Tribe in the event of a lease violation by the lessee if the lease so provides and the Tribe has expressly agreed to the application of state law.

CHAPTER 200. BUSINESS SITE LEASE REQUIREMENTS.

201. **Process for Obtaining a Lease.**

- (a) **Model Form Leases or Customized Leases.** All leases made pursuant to these Regulations shall be in a form approved by the Tribe. The Tribe may develop model form leases with standard terms and conditions similar to those in the standard form leases used by the BIA and make them available to prospective lessees. The Tribe may develop various form leases for specific types of leases, such as for telecommunications facilities, for retail commercial enterprises, for public, religious, educational, or recreational purposes, and for wind and solar resources (WSR) leases and for wind energy evaluation leases (WEELs). For a proposed non-standard or unusual use or occupancy, the Tribe may have to craft a customized lease.
- (b) **Lease Application Form.** A potential lessee interested in obtaining a lease for a site on Tribal land shall fill out a lease application form provided by the Tribe which will ask for basic information about the proposed uses and activities of the lessee, the improvements and facilities proposed to be constructed or installed at the site, and about the potential lessee.
- (c) **Determination of the Precise Location and Dimensions of the Leased Premises.** A potential lessee may propose the area or space on the Reservation that it desires for the leased premises, and the Tribe will determine its availability and suitability for the proposed use. If appropriate, the Tribe may indicate that another location on the Reservation is more suitable for the proposed leased premises. Once the general location of the proposed lease premises is determined, its precise dimensions must then be determined in order to meet the requirement for a proper description of the leased premises set forth in sub-section 203(a) of these Regulations.
- (d) **Plans and Specifications of Proposed Improvements and Facilities.** In order to finalize a lease, the lessee must deliver to the Tribe for review and approval preliminary plans of any improvements to be constructed and specifications of any equipment to be installed at the site.
- (e) **Construction Schedules.** Prior to execution of the lease, the lessee shall prepare and present to the Tribe for review and approval tentative construction schedules for permanent improvements planned for the leased premises that include dates for commencement and completion of construction. The construction schedules may provide sets of dates for phased construction of improvements.
- (f) **Information and Documentation Required for Environmental Review.** The lessee shall furnish the Tribe with the information and documentation outlined in Section 503 of these Regulations sufficient for the Tribe to identify and evaluate any significant environmental effects of the underlying action involved in the proposed lease.
- (g) **Restoration and Reclamation Plan.** If required by the Tribe, the lessee shall furnish the Tribe with a restoration and reclamation plan.
- (h) **Documentation of Ability and Technical Capacity.** The lessee shall furnish the Tribe with documents that demonstrate the ability of the lessee or lessee's agent or contractors to successfully design, construct, or obtain the funding for a project similar to the proposed project and the technical capacity to construct, operate, maintain, and terminate the proposed project at the leased premises.

- (i) **Legal Entity Documentation.** If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, the lessee shall furnish the Tribe with information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that: (1) The representative has authority to execute the lease; (2) The lease will be enforceable against the lessee; and (3) The legal entity is in good standing and authorized to conduct business in the State of California.
- (j) **Proof of Insurance.** If required by the Tribe, the lessee shall furnish the Tribe with certificates of insurance documenting that the lessee has the required insurance coverages in the required amounts.
- (k) **Surety Bond.** If required by the Tribe, the lessee shall furnish the Tribe with a performance bond or other security.

202. Tribe's Process for Approving a Business Lease.

- (a) In order to approve a proposed business lease, the Tribe must determine that the lease is in the best interest of the Tribe. In making that determination, the Tribe will:
 - (1) Review the lease and supporting documents;
 - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
 - (3) Consider the relationship between the proposed use of the leased land and the existing uses of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed or installed on the leased land; the extent to which the proposed use will involve the use of access roads or utilities infrastructure on Tribal land; how the proposed use may require the provision of services from the Tribe or may consume resources of the Tribe; and the effect on the environment of the uses to which the leased lands will be subject.
 - (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements of applicable federal law or regulations or tribal land use requirements.
- (b) Upon receiving a package of required business lease documents from the lessee, the Tribe will notify the proposed lessee whether the package is or is not complete, as follows:
 - (1) If the business lease documents package is not complete, the Tribe's notification letter will identify the missing information or documents required for a complete package.
 - (2) If the business lease documents package is complete, the Tribe will promptly acknowledge receipt of the complete package in writing.
- (c) After review of the complete package of required business lease documents and conducting due diligence review of the proposed site and other pertinent information, the Tribe will approve or disapprove the lease within a reasonable time and provide a written determination of lease

approval or disapproval to the proposed lessee and the basis for the determination, along with notification of any appeal rights under these Regulations.

- (d) Promptly upon a determination of lease approval, the Tribe will make arrangements for full execution of the lease by authorized representatives of the parties, and the Tribe will furnish the lessee with a true and complete copy of the fully executed lease.

203. Mandatory Provisions for Business Leases. A business lease must contain all of the following:

- (a) Description of the leased premises by reference to the tract or parcel in an official or certified survey, if possible, or if not possible, by 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) Identification of the purpose of the lease and authorized uses of the leased premises.
- (c) Identification of the parties to the lease.
- (d) Statement of the term of the lease and any provisions for renewal.
- (e) Statement of the effective date of the lease.
- (f) Identification of the ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, and removal of permanent improvements, if applicable.
- (g) Statement of rent payment requirements and late payment charges, including interest, and any other special fees related to nonpayment of rent.
- (h) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the lessee must pay all 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.
- (i) Identification of due diligence requirements applicable to the lease.
- (j) Identification of insurance requirements applicable to the lease.
- (k) Identification of bonding requirements, and if a performance bond 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.
- (l) Statement that 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 federal trust or restricted status.
- (m) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.

- (n) Statement that the lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (o) Statement that 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 Tribe to determine how to proceed and appropriate disposition.
- (p) Statement that the Tribe has the right, at any reasonable time during the term of the lease and upon reasonable notice to enter the leased premises for inspection and to ensure compliance.
- (q) Statement that any failure by a lessee to cooperate with a Tribal request to make appropriate records, reports or information available for Tribe inspection and duplication may be treated as a violation of the lease.
- (r) Statement that the lessee holds the Tribe and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises.
- (s) Statement that the lessee indemnifies the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the lease, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.
- (t) Statement that the lease and any other lease document, such as an amendment, assignment, sublease, or leasehold mortgage, will be provided to the BIA for recording in the LTRO.
- (u) Explanation of procedures for enforcement of lease violations.

204. **Duration of Leases.**

- (a) **Maximum Terms.** The term of a general business lease shall not exceed 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years, and in the case of a lease for public, religious, educational, or recreational purposes, 75 years. Shorter maximum terms for a wind and solar resources (WSR) lease are specified in Section 603 of these Regulations, and shorter maximum terms for a wind energy evaluation lease (WEEL) are specified in Section 622 of these Regulations.
- (b) **Minimum Terms.** Leases granted or approved under these Regulations shall be limited to the minimum duration, commensurate with the purpose of the lease that will allow the highest economic return to the owner consistent with prudent management and conservation practices.
- (c) **Periodic Review and Rental Adjustments.** Unless the consideration for the lease is based primarily on percentages of income produced by the land, the lease shall provide for periodic review, at not less than five-year intervals, of the equities involved. Such review shall give

consideration to the economic conditions at the time. Any adjustments of rental resulting from such review may be made by the Tribal Council.

205. Determination of Amount of Rent to be Paid.

- (a) **Fair Annual Rental Value.** Except as otherwise provided in this sub-section, no leases shall be approved or granted with a rent requirement at less than the present fair annual rental value.
- (b) **Appraisal.** The fair annual rental value for a proposed lease shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal.
- (c) **Exceptions for Permitted Lower Rent Levels.** Tribal land may be leased at less than the fair annual rental value for religious, educational, recreational, or other public purposes to religious organizations or to agencies of federal, state or local governments, or to cooperative ventures with other Indian tribes or Indian organizations, or for purposes of subsidization for the benefit of the Tribe.

206. Surety Bond. Unless otherwise provided in these Regulations, a satisfactory surety bond will be required in an amount that will reasonably assure performance of the contractual obligations under the lease. Such bond may be for the purpose of guaranteeing: (1) not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance; (2) the estimated construction cost of any improvement to be placed on the land by the lessee; or (3) an amount estimated to be adequate to insure compliance with any additional contractual obligations. The obligation for a surety bond may be fulfilled by an alternate security in the form of an irrevocable letter of credit from a bank or equivalent financial institution. The Tribe may waive the requirement for a surety bond if the lessee is a government agency or has established a prior relationship with the Tribe through previous or existing leases that demonstrates that the lessee has fulfilled its rental payments and other obligations faithfully and satisfactorily.

207. Insurance. The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do business in California, with the amount of coverage adequate to protect any improvements on the leased premises from "All Risks," including loss from fire, explosions, land movement, vandalism or theft; Commercial General Liability coverage for all damages, losses, claims, actions, and liabilities, including property damage, personal injuries and death, in an amount determined adequate by the Tribe, with the Tribe and the United States of America named as additional insureds; and such other insurance as may be necessary to protect the Tribe's interest.

208. Due Diligence Provisions. If permanent improvements are to be constructed by the lessee in the leased premises, the business lease must include due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or in a general schedule of construction approved by the Tribe, and a process for changing the schedule by mutual consent of the parties. If construction of the permanent improvements does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Tribe 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. 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. The Tribe may waive the requirements of this section for leases for

religious, educational, recreational, cultural, or other public purposes or if such a waiver is in the best interests of the Tribe.

209. Ownership and Disposition of Permanent Improvements.

- (a) If permanent improvements are to be constructed by the lessee in the leased premises, the 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 the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee constructs will fall under one of the following scenarios:
 - (1) Remain on the leased premises upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Tribe, and become the property of the Tribe;
 - (2) Be removed from the leased premises 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 from the leased premises 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.

210. Special Requirements and Provisions for Leases.

- (a) **No Preferential Right to Future Leases.** No lease made pursuant to these Regulations shall provide the lessee a preference right to future leases.
- (b) **Arrangements for Payment of Rent.** The lease shall contain provisions identifying the dates rents shall become due and payable. Except with the approval of the Tribal Council, no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. Leases made pursuant to these Regulations shall contain provisions as to whether payment of rentals is to be made directly to an account identified by the Tribal Council or to an account maintained by the Office of the Special Trustee (OST) for the benefit of the Tribe.
- (c) **Advertisement of Land for Lease or Permit.** Unless the Tribal Council decides otherwise based on reasonable grounds, prior to granting a lease or permit as authorized under these Regulations, the Tribe shall advertise the land for lease or permit. Any such advertisements will call for sealed bids and will not offer preference rights.
- (d) **Drainage or Irrigation Charges.** Any lease covering lands within an irrigation project or drainage district shall require the lessee to pay annually on or before the due date, during the term of the lease and in the amounts determined, all charges assessed against such lands. Such charges

shall be in addition to the rental payments prescribed in the lease. All payments of such charges and penalties shall be made to the official designated in the lease to receive such payments.

211. **Unitization for Leasing.** When it appears advantageous to the Tribe and to the operation of the land, a single lease contract may include more than one parcel of land, provided the statutory authorities and other applicable requirements of these Regulations are observed.

212. **Subleases.** With the consent of the Tribe, the lease may contain a provision authorizing the lessee to sublease the premises, in whole or in part, without further approval. Subleases so made shall not serve to relieve the original lessee from any liability nor diminish any supervisory authority of the Tribe provided under the approved lease.

214. **Encumbrances.** With the consent of the Tribe, the lease may contain a provision authorizing the lessee to encumber the lessee's leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises, such as by way of a mortgage or deed of trust. The encumbrance instrument must receive the prior written approval of the Tribe, and the Tribe reserves the right to withhold approval of the encumbrance instrument if the proposed loan amount exceeds the value of the interest being encumbered, and the Tribe may require that the encumbrance instrument give the Tribe a right of first refusal to purchase the encumbrance prior to a foreclosure under the approved encumbrance. If a sale or foreclosure under the Tribe-approved encumbrance occurs and the encumbrancer is the purchaser, the encumbrancer may assign the leasehold without the approval of the Tribe if the Tribe-approved encumbrance document so provides; provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser is a party other than the encumbrancer, such purchaser will be bound by the terms of the lease and will assume in writing all the obligations thereunder.

215. **Assignments.** An assignment of any lease or permit issued under these Regulations may be made only with the prior written approval of the Tribe and the written consent of all parties to the lease or permit.

216. **Amendments.** An amendment of any lease or permit issued under these Regulations may be made only with the prior written approval of the Tribe and the written consent of all parties to the lease or permit.

CHAPTER 300. ADMINISTRATION AND ENFORCEMENT.

301. **Tribe's Responsibilities in Administering and Enforcing Leases.** The Tribe will ensure that lessees meet their payment obligations under the leases through collection of rent and the prompt initiation of collection and enforcement actions and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to the Tribe under these Regulations. The Tribe will also ensure that lessees comply with the operating requirements in their leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Tribe and of Indians holding assignments of land near the leased premises. The Tribe will also take immediate action to recover possession of Tribal land from trespassers operating thereon without a lease, and take other emergency action as needed to preserve the value of the land.

302. **Tribal Management of Leasing Activity.** The Tribe shall establish a system for managing leasing activity on Tribal land, including establishing and maintaining an office as the prime location of leasing management activities and assigning staff with responsibility over management of leasing activity.

303. **Records: Ownership and Preservation.**

- (a) Records are the property of the United States if they are made or received by the Tribe in the conduct of a federal trust function under a self-determination contract with the Secretary pursuant to 25 U.S.C. section 450f *et seq.*
- (b) Records are the property of the Tribe if they are made or received by the Tribe in the conduct of business under these Regulations and are not covered by the provisions of sub-section (a) above relating to a federal trust function.
- (c) If the Tribe in the course of conducting business under these Regulations has records in its possession that are covered by Section 303(a)(1) hereof, the Tribe must preserve the records in accordance with approved BIA records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.
- (d) If the Tribe in the course of conducting business under these Regulations has records in its possession that are covered by Section 303(a)(2) hereof, the Tribe will preserve the records for a reasonable period of time in order to be able to adequately document essential transactions and to furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities hereunder.

304. **Administrative Fees.**

- (a) **Administrative Fees in General.** The Tribe will charge an administrative fee each time it reviews and approves a lease, a lease amendment, an assignment of a lease, a sublease, a mortgage or similar encumbrance, a permit, environmental review document, or a lease-related document, such as an encumbrance instrument. These fees will be paid by the lessee, assignee, sublessee, or permittee to cover the Tribe's costs in preparing or processing the documents and administering the lease.
- (b) **Amount of Administrative Fees.** The Tribal Council shall charge reasonable administrative fees for reviews of lease documents, taking into account the size, complexity or novelty of the documents to be reviewed and considering whether any costs will be incurred by the Tribe for the services of outside legal counsel or environmental consultants in conducting such reviews. In the Tribe's sole reasonable discretion, the Tribe could charge an administrative fee calculated as a percentage of the rent payable under the lease, or waive all or part of an administrative fee.

305. **Notification That Rent Payments Are Due.** The Tribe may, but is not required to, issue bills or invoices to a lessee in advance of the dates on which rent payments are due under a lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such bills or invoices are not delivered or received.

306. **Interest Charges or Late Payment Penalties.** A lease must specify the rate at which interest will accrue on any rent payment not made by the due date or any other date specified in the lease. A lease may also identify additional late payment penalties that will apply if a rent payment is not made by a specified date. Unless otherwise provided in the lease, such interest charges and late payment penalties will apply in the absence of any specific notice to the lessee from the Tribe, and the failure to pay such amounts will be treated as a lease violation. Notwithstanding the above, upon a petition from a lessee that had not made rent payments by the due date and for good cause, the Tribe may waive or reduce the amount of accrued interest charges or late payment penalties.

307. **Tribal Enforcement Procedures If Rent Payments are not Made in the Time and Manner Required by the Lease.**

- (a) A lessee's failure to pay rent in the time and manner required by a lease will be a violation of the lease, and a notice of violation will be issued under Section 310 hereof. If the lease requires that rent payments be made to the Tribe, the Tribe will send the lessee and its sureties a notice of violation within five business days of the date on which the rent payment was due.
- (b) If a notice of violation has been issued by the Tribe to a lessee and if the lessee fails to provide proof of payment or cure the violation within ten business days of the lessee's receipt of the notice of violation, and the amount due is not in dispute, the Tribe may take immediate action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. The Tribe may also cancel the lease under Section 311 hereof, or invoke any other remedies available under the lease or applicable law, including collection on any available bond. An action to recover any unpaid amounts will not be conditioned on the prior cancellation of the lease or any further notice to the lessee, nor will such an action be precluded by a prior cancellation.
- (c) Partial payments and underpayments of rent may be accepted by the Tribe, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing lease violations.
- (d) Unless otherwise provided in the lease, overpayments may be credited as an advance against future rent payments, or refunded.
- (e) If a personal or business check for rent is dishonored by the financial institution on which the check was drawn, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a violation of the lease, and a notice of violation will be issued under Section 310 hereof. If such occurs, the Tribe may require that any payment made to cure such a violation, and any future payments by the same lessee, must be made by an alternative payment method or source approved by the Tribe.

308. **Special Administrative Fees Assessed on Delinquent Rent Payments.** The following special fees will be assessed if rent is not paid in the time and manner required under the lease, in addition to any interest or late payment penalties that must be paid to the lessor under a lease, to cover administrative costs incurred by the Tribe in the collection of debt:

- (a) \$50.00 – Administrative fee for dishonored checks.

- (b) \$15.00 – Administrative fee for Tribal processing of each notice or demand letter.
- (c) 10% of balance due – Administrative fee charged for retainer for referral for collection of delinquent debt.

309. Investigations to Determine Lessee Compliance.

- (a) Unless a lease provides otherwise, the Tribe may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Tribe and of Indians holding assignments of land nearby the leased premises and to ensure that the lessee is in compliance with the operating requirements of the lease.
- (b) If an Indian holding a land assignment nearby the leased premises notifies the Tribe that a specific lease violation has occurred, the Tribe will promptly initiate an appropriate investigation.

310. Tribal Enforcement Procedures in the Event of a Violation Under a Lease.

- (a) If the Tribe determines that a lease has been violated, the Tribe will send the lessee and its sureties a notice of violation within five business days of that determination. The notice of violation must be provided by certified mail, return receipt requested.
- (b) Within ten business days of the receipt of a notice of violation from the Tribe, the lessee must:
 - (1) Cure the violation and notify the Tribe in writing that the violation has been cured;
 - (2) Dispute the Tribe's determination that a violation has occurred and/or explain why the Tribe should not cancel the lease; or
 - (3) Request additional time to cure the violation.

311. Remedies for Lease Violations.

- (a) If a notice of violation has been issued by the Tribe to a lessee and if the lessee does not cure the violation of the lease within the requisite time period, the Tribe will consult with the lessee and with Indians holding assignments of land near the leased premises if appropriate, and determine whether:
 - (1) The lease should be canceled by the Tribe;
 - (2) The Tribe should invoke any other remedies available to the Tribe under the lease, including collecting on any available bond; or
 - (3) The lessee should be granted additional time in which to cure the violation.
- (b) If the Tribe decides to grant a lessee additional time in which to cure a violation, the lessee must proceed diligently to complete the necessary corrective actions within a reasonable or specified time period from the date on which the extension is granted.

- (c) If the Tribe decides to cancel the lease, the Tribe will send the lessee and its sureties a cancellation letter within five business days of that decision. The cancellation letter must be sent to the lessee by certified mail, return receipt requested. The cancellation letter will:
- (1) Explain the grounds for cancellation;
 - (2) Notify the lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the lease;
 - (3) Notify the lessee of its right to appeal, including the amount of any appeal bond that must be posted with an appeal of the cancellation decision; and
 - (4) Order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time.

312. Holding Over After Expiration or Cancellation of a Lease. If after lessee remains in possession of the premises after the expiration or cancellation of a lease, the Tribe will treat the unauthorized use as a trespass, namely an unauthorized presence on or continued possession of the land after cessation of a legal right to such presence or possession, including any failure to remove from the land anything which the lessee was under a duty to remove after the lessee's legal right to remain on the land ceases. The Tribe will take action to recover possession of the leased premises and pursue any additional remedies available under applicable law, which may include pursuing an appropriate judicial action.

313. Take Emergency Action. If a lessee or any other party causes or threatens to cause immediate and significant harm to the leased premises during the term of a lease, the Tribe will take appropriate emergency action. Emergency action may include pursuing an appropriate judicial action.

314. Appeals of Decisions on Business Leases.

- (a) **Appeal by Proposed Lessee of a Disapproval of the Proposed Lease or of Imposition of Unacceptable Conditions.** If the Tribal Council makes a determination on behalf of the Tribe not to approve a proposed business lease or to approve the proposed business lease with required revisions or conditions that are not acceptable to the proposed lessee, the proposed lessee may appeal the determination by submitting a written appeal to the Tribal General Council within 15 days of the final determination by the Tribal Council, stating the grounds for the appeal. The Tribal staff with responsibility over management of leasing activity on Tribal land will promptly provide a written report to the Tribal General Council on the proposed lease and the appeal, with a copy to the appellant, explaining the grounds for the Tribal Council's determination on the proposed lease and addressing the grounds raised in the written appeal. The Tribal General Council will review the pertinent documentation (including, without limitation, the proposed lease, documentation of the environmental review conducted under these Regulations on the proposed actions that would occur under the proposed lease, documentation of the Tribal Council's determination on the proposed lease, the proposed lessee's appeal, and the Tribal staff's written report on the appeal), will address the appeal in a regular or special meeting of the Tribal General Council, and then issue a written decision on the appeal within a reasonable time. The Tribal General Council's written decision will either uphold the Tribal Council's determination on the proposed lease or grant the appeal with direction to the Tribal staff on

next steps to take, if any, regarding the proposed lease. A copy of the Tribal General Council's decision will promptly be delivered by Tribal staff to the proposed lessee.

- (b) **Appeal of a Lease Approval by a Tribal Member with a Definable Interest.** If the Tribe Council makes a determination on behalf of the Tribe to approve a proposed business lease, any member of the Tribe holding a land assignment nearby the proposed leased premises or any other member of the Tribe with a definable interest in the proposed lease may appeal the determination by submitting a written appeal to the Tribal General Council within 15 days of the final determination by the Tribal Council, stating the grounds for the appeal. The Tribal staff with responsibility over management of leasing activity on Tribal land will promptly provide a written report to the Tribal General Council on the proposed lease and the appeal, with a copy to the appellant, explaining the grounds for the Tribal Council's approval of the proposed lease and addressing the grounds raised in the written appeal, and copies of the appeal and the Tribal staff's written report will promptly be provided to the proposed lessee. The Tribal General Council will review the pertinent documentation (including, without limitation, the proposed lease, documentation of the environmental review conducted under these Regulations on the proposed actions that would occur under the proposed lease, documentation of the Tribal Council's approval of the proposed lease, the written appeal, and the Tribal staff's written report on the appeal), will address the appeal in a regular or special meeting of the Tribal General Council, and then issue a written decision on the appeal within a reasonable time. The Tribal General Council's written decision will either uphold the Tribal Council's approval of the proposed lease or grant the appeal with direction to the Tribal staff on next steps to take, if any, regarding the proposed lease. A copy of the Tribal General Council's decision will promptly be delivered by Tribal staff to the appellant and to the proposed lessee.

CHAPTER 400. COORDINATION WITH AND OVERSIGHT BY THE BIA.

401. **Documentation.** Whenever the Tribe executes a lease pursuant to these Regulations, the Tribe shall provide the Secretary with: (1) a copy of the lease, including any amendments to or renewals of the lease; and (2) in the case of Tribal regulations or a lease that allows for lease payments to be made directly to the Tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States as set forth in Section 402 hereof. Also, the Tribe's delivery to the BIA of business lease documentation, including executed leases, lease amendments, subleases, and lease assignments, is required so that the BIA can record such lease documents in the LTRO.

402. Trust Responsibility.

- (a) **In General.** The United States shall not be liable for losses sustained by any party to a lease executed pursuant to these Regulations and under the HEARTH Act of 2012.
- (b) **Authority of Secretary.** Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Tribe pursuant to these Regulations and under the HEARTH Act of 2012.

403. **Compliance.**

- (a) **In General.** A party with a definable interest in the lease or in the proposed action that would follow under an approved lease, after exhausting the appeals process set forth in Section 314 of these Regulations, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the Tribe with these Regulations approved by the Secretary under the HEARTH Act of 2012.
- (b) **Violations.** If, after carrying out a review under sub-paragraph (a) of this section, the Secretary determines that the Tribal Regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the Tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.
- (c) **Documentation.** If the Secretary determines that a violation of the Tribal Regulations has occurred and a remedy is necessary, the Secretary shall:
 - (1) make a written determination with respect to the Tribal Regulations that have been violated;
 - (2) provide the Tribe with a written notice of the alleged violation together with such written determination; and
 - (3) prior to the exercise of any remedy, the rescission of the approval of the Tribal Regulation involved, or the resumption of lease approval responsibilities, provide the Tribe with:
 - a. A hearing that is on the record; and
 - b. A reasonable opportunity to cure the alleged violation.

404. **BIA Review and Approval of Changes in Regulations.** All major substantive changes to these Regulations previously approved by the BIA shall be submitted to the BIA for review and approval before such modifications to the Regulations may be deemed effective or enforceable. Minor technical amendments to the Regulations may be made without BIA approval.

CHAPTER 500. ENVIRONMENTAL REVIEW PROCESS.

501. **Purposes of the Tribal Environmental Review Process.** The Tribe has developed its own environmental review process as part of these Regulations in order to comply with the guidance given for approval of Tribal business site leasing regulations in the HEARTH Act of 2012 at section (h)(3)(B)(ii) and in the Bureau of Indian Affairs National Policy Memorandum NPM-TRUS-29 entitled "Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act" issued and effective on January 16, 2013. The Tribe's intentions in developing its own environmental review process were to utilize relevant and appropriate environmental review principles and procedures found in NEPA and related federal Regulations found at 40 CFR 1501 *et seq.* and also to utilize appropriate and relevant environmental review concepts and procedures found in the California Environmental Protection Act (CEQA), California Public Resources Code section 21000 *et seq.*, and related state regulations set forth in the CEQA Guidelines, 14 California Code of Regulations section 15000 *et seq.*, in tailoring the scope of environmental review to the types of actions anticipated to be related to leases of Tribal land. Pursuant

to these Regulations, the Tribe will be the lead agency for environmental review of such actions in connection with its review, approval, management, and enforcement of business site leases under these Regulations. While the Tribe has utilized concepts and procedures found in NEPA and CEQA, the Tribe is not required to follow or implement all of the principles or procedures found in NEPA or CEQA in conducting environmental review under these Regulations.

502. **Definitions.** For purposes of the Environmental Review Process for proposed business leases on the Santa Rosa Reservation, the following words and phrases shall have the meanings set forth in this section:

- (1) **Action** means an activity which may cause either a direct physical change in the human environment or a reasonably foreseeable indirect change in the human environment.
- (2) **Categorical exclusion** means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have found to have no such effect and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.
- (3) **Environmental Assessment** means a concise public document disclosing and analyzing the environmental consequences of a proposed action, the “no action” alternative, and a reasonable range of alternatives so that the Tribe has sufficient evidence and analysis for determining whether to prepare or cause to be prepared an environmental impact statement or a finding of no significant impact. The document shall include brief discussions of the need for the proposed action and a listing of agencies and persons consulted.
- (4) **Finding of no significant impact** means a document issued by the Tribe briefly presenting the reasons why a proposed action, not otherwise falling within a categorical exclusion, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. The document shall either include the Environmental Assessment as an attachment or a summary of it.
- (5) **Mitigation of an impact** means one of the following:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
 - (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
 - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- (6) **Public** as used in this sub-section means Tribal members, and/or individuals who live or work on Tribal land, and/or business entities or institutions that have programs or activities on Tribal land and as stakeholders have definable interests that reasonably may be affected by the proposed lease or its underlying action.
- (7) **Significant** as used in this sub-section means a substantially severe adverse impact or effect. Significance varies with the setting of the proposed action, and in the case of a site-specific

action, significance would usually depend upon the effects in the locale. The following should be considered in evaluating the severity or intensity of an impact:

- (a) Whether an impact is beneficial or adverse.
- (b) The degree to which the proposed action affects public health and safety.
- (c) Unique characteristics of the geographical area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- (d) The degree to which the effects in the quality of the human environment are likely to be highly controversial.
- (e) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- (f) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- (g) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- (h) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.
- (i) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- (j) Whether the action threatens a violation of Federal or Tribal law or requirements imposed for the protection of the environment.

503. **Intake of Proposed Leases.** Whenever a potential lessee proposes a site business lease for premises on Tribal land, the Tribe shall require the applicant to present basic information to the Tribe about the lease and the proposed uses and activities of the lessee. The proposed lessee shall fill out a Lease Application form provided by the Tribe and, if available at the time of intake, identify the precise location and dimensions of the proposed lease premises and furnish copies of proposed plans and drawings or photographs showing the expected exterior appearance of any improvements to be constructed or any accessory equipment to be attached to structures at the premises. The filled-out Lease Application and any attachments shall be included in the written report documenting the environmental review of the action related to the proposed lease.

504. **Identification and Evaluation of Significant Environmental Effects of a Proposed Action.** As part of its review of a proposed site business lease, the Tribe shall conduct an evaluation of potential environmental effects or impacts on the environment of any action related to a proposed lease, using its own staff or, if necessary for major actions, environmental consultants. The Tribe shall conduct an evaluation of the significance of all identified potential environmental effects of the proposed action, utilizing the standards of significance set forth in the definition of "Significant" at section 502.7 of these Regulations and taking the following steps in the identification and evaluation of potential significant environmental effects of a proposed action:

- (A) **Identify any "action" related to a proposed lease which may cause either a direct physical change in the human environment or a reasonably foreseeable indirect change in the human**

environment. A potential lessee must disclose to the Tribe, and the Tribe will check and confirm:

- (1) If the proposed lease will involve any grading, excavations, installation of structural improvements, modification of existing improvements, or other construction work;
- (2) What operations and activities are planned for the leased premises; and
- (3) If the proposed leased premises are located at or near an environmentally sensitive area or natural resource.

A written statement identifying the action and its principal components will be included in the written report documenting the environmental review of the action related to the proposed lease.

(B) **Identify which elements of the human environment may be affected by the anticipated action.**

The Tribe will use the following checklist to identify which elements of the human environment will need to be evaluated if they may be affected by the anticipated lease-related action:

- (1) Any adverse effects to air quality;
- (2) Any adverse effects to water resources (surface and ground water, water quality, water quantity, water uses and rights);
- (3) Any adverse effects to floodplains or wetlands;
- (4) Any adverse effects to biological resources (wildlife, vegetation, ecosystems and biological communities);
- (5) Any adverse effects to cultural, archeological, and historic resources;
- (6) Any adverse effects on agriculture, hunting, fishing, gathering, timber harvesting, mining, or recreational uses of land;
- (7) Whether the proposed action would jeopardize threatened or endangered species;
- (8) Any adverse effects on visual resources, scenic views, and wilderness values;
- (9) Any generation of excessive noise, vibrations, light, or glare;
- (10) Any adverse effects on transportation networks;
- (11) Any adverse traffic impacts;
- (12) Any adverse effects on public health and safety;
- (13) Any adverse effects on the economic and social conditions of the Tribe community; or

- (14) Any adverse effects upon minority and low income populations as defined in Executive Order 12898 (Environmental Justice).

For any of the above categories of aspects of the environment which are noted on the checklist as ones that will certainly or probably be adversely affected by the proposed action, the specific aspect of the identified category will be identified and explained in writing. The checklist with its notations and added statements will be included in the written report documenting the environmental review of the action related to the proposed lease.

(C) **Determine if the proposed action is categorically excluded from further environmental review.**

In general, subject to the exceptions listed in sub-paragraph (7) below, the following actions or activities shall be considered categorically excluded from any requirement to prepare an Environmental Assessment or an Environmental Impact Statement in connection with the environmental review of an action related to a lease processed under these Regulations:

- (1) **Existing Facilities:** The operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of entering into the lease. Examples include, without limitation: (a) alterations of interior partitions, plumbing, electrical conveyances, or gutters; (b) restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment; (c) demolition and removal of small structures; and (d) minor repairs. Examples include telecommunications leases that authorize the lessee to use existing equipment shelters, towers and poles on Toro Peak, including making minor alterations of the inside or outside of such structures or adding antennas to existing towers or poles.
- (2) **Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same size, purpose and capacity as the structure replaced, including, without limitation, replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity and conversion of overhead electrical utility distribution system facilities to underground facilities.
- (3) **New Construction of Small Structures:** Construction of a limited number of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the construction or placement of minor accessory (appurtenant) structures such as small above-ground utility facilities shelters, on-premises signs, small parking lots, and fences.
- (4) **Minor Alterations to Land:** Minor alterations in the condition of land and/or vegetation which do not involve removal of healthy, mature or scenic trees. Examples include: (a) grading on land with a slope of less than 10 percent; (b) landscaping installation and maintenance; (c) filling of earth into previously excavated land with material compatible with the natural features of the site; and (d) Minor trenching and backfilling where the surface is restored.

- (5) **Minor Additions to Existing Structures:** Minor additions to existing buildings or other structures where the addition does not increase the original size by more than 25%.
- (6) **Minor Hazardous Waste Cleanup Actions:** Minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance. Examples of such minor cleanup actions include but are not limited to:
- (a) Removal of relatively small amounts or volumes of hazardous waste left in the premises by a prior lessee, provided that the waste has been stabilized, contained, and is designated for a lawfully permitted destination;
 - (b) Application of dust suppressants or dust binders to surface soils;
 - (c) Construction or maintenance of temporary surface caps; and
 - (d) Posting of warning signs and fencing for a hazardous waste site that meets legal requirements for protection of wildlife.
- (7) **Exceptions to Categorical Exclusions:** The above-listed categorical exclusions are inapplicable when any of the following circumstances exist:
- (a) **Location.** An action that is ordinarily insignificant and falls within a category that ordinarily would qualify for a categorical exclusion may be significant in a particularly sensitive environment.
 - (b) **Cumulative Impact.** When the cumulative impact of successive actions of the same type in the same place over time is significant.
 - (c) **Unusual Circumstances.** Where there is a reasonable possibility that the action will have a significant effect on the environment due to unusual circumstances.
 - (d) **Scenic Highways.** When the action may result in significant adverse impacts on scenic resources within a highway officially designated as a state scenic highway.
 - (e) **Hazardous Waste Sites.** When the action is located on a site which is officially designated as a hazardous waste site on a list compiled pursuant to applicable state or federal regulations.
 - (f) **Historical or Cultural Resources.** When the action may cause a substantial adverse change in the significance of an historical or cultural resource.

If the action properly falls within a categorical exclusion, the categorical exclusion shall be identified and an explanation of why the action fits within it shall be included in the written report documenting the environmental review of the action related to the proposed lease.

(D) **Evaluation of Whether Any Identified Effects on the Human Environment are Significant.** For each potential environmental impact or effect of the action involved in the proposed lease that has been identified and that does not properly fall within a categorical exclusion, the Tribe shall determine whether or not the impact or effect is adverse or beneficial, and if adverse, whether the degree of adversity reaches a level that is reasonably seen as resulting in a substantially severe adverse change in the environment. In making these determinations, the Tribe shall exercise good common sense and also utilize the standards of significance set forth in the definition of "Significant" at section 502.7 of these

Regulations. Written statements explaining the Tribe's determinations on whether any identified effects on the environment are significant will be included in the written report documenting the environmental review of the action related to the proposed lease.

505. Determination Whether Mitigation Measures Can Reduce the Identified Adverse Environmental Effects to a Level of Non-Significance. For each potential environmental impact or effect of the action involved in the proposed lease that has been determined to have a substantial adverse impact on the environment, the Tribe shall consider whether any mitigation measures are reasonably available that could reduce the identified adverse impacts to a level of non-significance. Such mitigation measures may be imposed by the Tribe as conditions for approval of a proposed lease. Written statements explaining the Tribe's determinations on whether identified mitigation measures are reasonably available to reduce identified adverse environmental effects to a level of non-significance and whether or not they will be included as conditions for approval of the proposed lease will be included in the written report documenting the environmental review of the action related to the proposed lease.

506. Public Information and Comments. When the Tribe is contemplating an approval of a proposed business site lease under these Regulations, the Tribe shall insure that the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Tribe. The Tribe shall give reasonable notice to the public of any significant environmental impacts of any action related to a proposed business site lease by posting of written notices thereof at locations where interested members of the public will see the notices, such as on a bulletin board at the Tribal Center. Depending on the scope of the changes to the environment that would occur as a result of an approval of the proposed lease, the Tribe shall reasonably decide whether or not to publish a written notice of a proposed action in a newspaper of general circulation available to persons in the vicinity of the proposed premises, or whether or not to give written notice by mail to persons in the vicinity of the proposed premises, or whether or not to schedule a public hearing on the proposed action, or to make other arrangements to notify the public, such as by email to available email addresses or by social media. The public shall have 30 days to provide comments. All public comments on the proposed action shall be copied, recorded, or otherwise documented and preserved.

507. Tribal Responses to Public Comments. Prior to any approval of a proposed business site lease under these Regulations, the Tribe shall provide written responses to all relevant and substantive public comments on any significant environmental impacts of the proposed action. The Tribe shall have the option to provide collective responses to public comments of similar content on specific identified significant environmental impacts of the proposed action.

508. Tribal Actions on Proposed Leases to Incorporate Environmental Factors. In making any decision whether to approve or withhold approval from a proposed business site lease, after reviewing all public comments and responses and the recommendations from its own staff and any consultants involved in the lease review process, the Tribe shall make a threshold determination whether or not the proposed action involves significant environmental impacts, and thereafter shall determine whether or not the identified environmental impacts can be mitigated to a level of non-significance by the imposition of reasonable mitigating measures as conditions of approval or by requiring changes to the proposed action. Whenever the Tribe has conducted a formal Environmental Assessment (EA) of the proposed action and thereupon determined that the proposed action would not result in significant adverse impacts upon the environment, the Tribe shall prepare and issue a Finding of No Significant Impact (FONSI) for the proposed project under these Regulations, release to the public a Notice of Availability of the FONSI, and wait for 30 days for any public comments on the FONSI before making a decision to

proceed with approval of the proposed business site lease. If the EA includes recommended findings that the proposed action would result in unavoidable significant adverse impacts upon the environment, the Tribe shall require that an Environmental Impact Statement (EIS) be prepared and processed under these Regulations. After review of a final EIS, the Tribe shall make a determination whether or not to withhold approval of the proposed business site lease, require substantive changes in the lease and proposed operations and/or facilities therein, or approve the proposed lease subject to a formal finding of overriding economic or social considerations.

509. Appeals of Tribal Environmental Determinations. When the Tribal Council makes an environmental determination in connection with approving or disapproving a proposed lease, the proposed lessee or a member of the Tribe with a definable interest in the proposed lease may appeal the environmental determination by submitting a written appeal thereof to the Tribal General Council, and the Tribal staff and the Tribal General Council will respond to the appeal according to the procedures set forth in Section 314 of these Regulations regarding appeals of decisions on business leases.

CHAPTER 600: WIND AND SOLAR RESOURCE LEASES

601. Purposes of Incorporating Standards for Wind and Solar Resource Leases and Wind Energy Evaluation Leases into the Tribal Leasing Regulations. The Tribe has developed this Chapter to provide standards for Wind and Solar Resource (WSR) Leases and Wind Energy Evaluation Leases (WEELs) as part of these Regulations. The Tribe's intentions in setting forth standards for such leases are to provide the policies and procedures for the Tribe itself to review and approve leases for areas on Tribal land that are determined suitable for the installation, operation and maintenance of infrastructure and facilities to harness wind and/or solar energy to generate and supply electricity (i) for resale on a pro-profit or non-profit basis; (ii) to a utility grid serving the public generally; or (iii) to users of electricity within the local community (e.g., on and adjacent to Tribal land). These standards are tailored to the site conditions on Tribal land and to the existing electrical power system serving Tribal land and the surrounding area.

WIND AND SOLAR RESOURCES (WSR) LEASES

602. Definition of Wind and Solar Resource (WSR) Leases. A WSR lease authorizes a lessee to possess Tribal land to conduct activities related to the installation, operation, and maintenance of wind and/or solar energy resource development projects. Activities include installing instrumentation facilities and infrastructure associated with the generation, transmission, and storage of electricity, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity, and other related activities.

603. Term of a WSR Lease. A WSR Lease must provide for a definitive lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The initial term shall not exceed 25 years, and there can be up to two renewal terms each not to exceed 25 years, for a combined maximum term of 75 years. The appropriate length of the WSR Lease term and of any renewal terms will be based on reasonable factors, such as the purpose of the lease, the type of financing to be used for paying the costs of the proposed installations, the level of investment to be made by the lessee, and that the WSR lease may not be extended by holdover.

604. Mandatory Provisions of a WSR Lease. A WSR Lease must contain all of the following:

- (1) Identification of the leased premises by reference to the tract or parcel.
- (2) Identification of the purpose of the WSR lease and authorized uses of the leased premises.
- (3) Identification of the parties to the lease.
- (4) Statement of the term of the lease and any provisions for renewal.
- (5) Identification of the ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing WSR equipment, access roads, transmission lines and related facilities.
- (6) Identification of who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission.
- (7) Statement of payment requirements and late payment charges, including interest.
- (8) Identification of due diligence requirements that require the lessee to:
 - (1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent within a timeframe in the resource development plan;
 - (2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this sub-section, provide the Tribe 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;
 - (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 of 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);and that specify that failure of the lessee to comply with due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease.
- (9) Identification of the insurance policies that the lessee must provide to protect the interests of the Tribe and in the amounts sufficient to protect all insurable permanent improvements on the leased premises, which may include property, liability, and casualty insurance, and identifying the Tribe and the United States as additional insured parties, provided that the insurance requirement may be waived if the WSR Lease is for less than fair market value or for nominal compensation, or if the Tribe determines that a waiver of all or part of the otherwise required insurance is in its best interest.
- (10) Bonding requirements, and if a performance bond is required, the WSR Lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

605. **How Ownership of Permanent Improvements Will Be Addressed in a WSR Lease.** A WSR Lease must specify who will own any permanent improvements the lessee installs during the term of the WSR Lease and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Tribe during the term of the WSR Lease. In addition, the WSR Lease must indicate whether each specific permanent improvement the lessee installs will: (i) Remain on the leased premises upon the expiration, termination, or cancellation of the WSR Lease in a condition satisfactory to the Tribe and become the property of the Tribe; (ii) Be removed within a time period specified in the WSR 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 (iii) Be disposed of by other specified means. A WSR 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.

606. **Effective Date of a WSR Lease.** A WSR Lease becomes effective on the date that the Tribe approves the WSR lease, even if an appeal is filed. Notwithstanding the above, the WSR Lease may specify a date on which the obligations between the parties are triggered, and such date may be before or after the date that the Tribe approves the WSR Lease.

607. **Recordation of a WSR Lease and Other WSR Lease Documents.** The Tribe shall deliver any WSR lease documents approved by the Tribe to the BIA for recordation in the LTRO with jurisdiction over the Tribal land promptly upon the Tribe's approval of the WSR Lease.

608. **Amendment of a WSR Lease.** An amendment of a WSR Lease will require all of the following:

- (1) Approval of the Tribe;
- (2) The lessee is in good standing regarding performance of its obligations under the WSR Lease, and there are no pending uncured defaults of the lessee; and
- (3) The amendment must be in writing and fully executed by authorized representatives of the parties.

609. **Tribe's Approval Process for an Amendment of a WSR Lease.** The Tribe will generally approve a proposed amendment of a WSR Lease unless at least one of the following is true: (i) The lessee is in violation of the WSR lease; or (ii) The Tribe finds a compelling reason to withhold approval of the proposed amendment in order to protect the best interests of the Tribe. The Tribe will not unreasonably withhold approval of a proposed amendment.

610. **Assignment of a WSR Lease.** An assignment of a WSR Lease will require all of the following:

- (1) Approval of the Tribe, except for assignment to a distinct legal entity specified in the WSR Lease as a pre-approved assignee or to a wholly owned subsidiary of the lessee;
- (2) The assignee agrees in writing to assume all of the obligations and conditions of the WSR Lease;
- (3) The assignee agrees in writing that any transfer of the WSR Lease will be in accordance with applicable law;
- (4) The lessee is in good standing regarding performance of its obligations under the WSR Lease, and there are no pending uncured defaults of the lessee; and
- (5) The assignment must be in writing and fully executed by authorized representatives of the parties.

611. **Tribe's Approval Process for an Assignment of a WSR Lease.** The Tribe will generally approve a proposed assignment of a WSR Lease unless at least one of the following is true: (i) The lessee is in

violation of the WSR Lease; (ii) The assignee does not agree to be bound by the terms of the WSR Lease; or (iii) The Tribe finds a compelling reason to withhold approval of the proposed assignment in order to protect the best interests of the Tribe. In determining whether or not there is a compelling reason to withhold approval of a proposed assignment, the Tribe may consider whether: (i) The value of any part of the leased premises not covered by the assignment would be adversely affected; (ii) If a performance bond is required, whether the assignee has posted the bond or security; and (iii) Whether the assignee has provided the Tribe with supporting documents that demonstrate that the lease will be enforceable against the assignee and that the assignee will be able to perform its obligations under the WSR Lease or the assignment. The Tribe will not unreasonably withhold approval of a proposed assignment.

612. Subleasing a WSR Lease. A lessee may sublease a WSR Lease by meeting the following requirements:

- (1) Approval of sublease by the Tribe, unless the WSR Lease provides that the Tribe's consent is not required;
- (2) The sublease does not relieve the lessee/sublessor of any liability;
- (3) The sublease must be in writing, and be fully executed by authorized representatives of the parties; and
- (4) A copy of the fully executed sublease must be provided to the Tribe within 30 days after it is fully executed.

613. Tribe's Approval Process for a Sublease of a WSR Lease. The Tribe will generally approve a proposed sublease of a WSR Lease unless a least one of the following is true: (i) The lessee is in violation of the WSR Lease; (ii) The lessee will not remain liable under the WSR Lease; or (iii) The Tribe finds a compelling reason to withhold approval in order to protect the best interests of the Tribe. The Tribe will not unreasonably withhold approval of a proposed sublease.

614. Encumbrance of a WSR Lease. With the consent of the Tribe, a WSR Lease may contain a provision authorizing the lessee to encumber the lessee's leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises with the planned wind or solar resources, such as by way of a mortgage or deed of trust. A lessee may encumber a WSR Lease by meeting the following requirements:

- (1) Approval of the encumbrance instrument by the Tribe, unless the WSR Lease provides that the Tribe's consent is not required;
- (2) That the encumbrance instrument does not include any mortgaging of Indian tribal land itself;
- (3) The encumbrance instrument must be in writing, and be fully executed by authorized representatives of the parties; and
- (4) A copy of the fully executed encumbrance instrument must be provided to the Tribe within 30 days after it is fully executed.

615. Tribe's Approval Process for an Encumbrance of a WSR Lease. The Tribe will generally approve a proposed encumbrance of a WSR Lease unless a least one of the following is true: (i) The encumbrance instrument includes securing Indian tribal land itself by the mortgage or deed of trust; or (ii) The Tribe finds a compelling reason to withhold approval in order to protect the best interests of the Tribe. In determining whether or not there is a compelling reason to withhold approval of a proposed encumbrance of a WSR Lease, the Tribe may consider whether: (i) The proceeds of loan secured by the mortgage or deed of trust would be used for purposes unrelated to the leased premises; and (ii) The encumbrance is limited to the leasehold. The Tribe will not unreasonably withhold approval of a proposed leasehold mortgage.

616. **Tribal Investigation of Compliance with a WSR Lease.** The Tribe has the authority to direct a designated officer, employee or agent to 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 determine if the lessee is in compliance with the applicable requirements of the WSR Lease and to protect the interests of the Tribe. If a member of the Tribe notifies the Tribe that a specific violation of the WSR Lease has occurred, the Tribe will promptly initiate an appropriate investigation.

617. **Abandonment of the Leased Premises.** If a lessee abandons the leased premises specified in a WSR Lease, the Tribe will treat the abandonment as a violation of the WSR Lease. The WSR Lease may specify a period of non-use after which the leased premises will be considered abandoned.

618. **Tribal Procedures for Handling Violations of a WSR Lease.** If the Tribe determines that the lessee is in violation of an obligation placed on the lessee in the WSR Lease, the Tribe will follow the procedures set forth below:

- (a) If the lessee is in violation of the WSR Lease for failure to pay rent or other required compensation in the time and manner required by the WSR Lease, the Tribe will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested, that requires the lessee to promptly cure the violation by making the required payment and to provide the Tribe with adequate proof of payment.
- (b) If the lessee is in violation of a WSR Lease for failure to fulfill an obligation other than payment of rent or other required compensation, the Tribe will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested, that will advise the lessee that within 10 business days of the receipt of a notice of violation that the lessee must cure the violation and notify the Tribe in writing that the violation has been cured, or request additional time to cure the violation, or dispute the Tribe's determination that a violation has occurred.
- (c) 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 Tribe will determine whether: (i) The Tribe should cancel the WSR Lease; or (ii) Grant the lessee additional time in which to cure the violation; or (iii) Invoke other remedies available under the WSR Lease or applicable law, including collection on any available performance bond or other debt collection measures available to the Tribe for unpaid compensation and any late payment charges.
- (d) If the Tribe decides to cancel the WSR Lease, the Tribe will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of the Tribe's decision. The cancellation letter will: (i) Explain the grounds for cancellation; (ii) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the WSR Lease; (iii) Notify the lessee of the lessee's right to appeal the cancellation and request a re-hearing; (iv) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and (v) Order the lessee to take any other action the Tribe deems necessary to protect the Tribe.

619. Tribal Procedures if a Lessee Remains in Possession of the Leased Premises After a WSR Lease Expires or is Terminated or Cancelled. If a lessee remains in possession of the leased premises after the expiration, termination, or cancellation of a WSR Lease, the Tribe may treat the unauthorized possession as a trespass under applicable law, and the Tribe may take action to recover possession of the leased premises and pursue any additional remedies available under applicable law, which may include pursuing an appropriate judicial action.

620. Appeals of Decisions on WSR Leases or Other WSR Lease Documents. If the Tribe makes a determination not to approve a proposed WSR Lease or a proposed amendment, sublease, assignment or encumbrance of a WSR Lease, or to approve the proposed WSR Lease or other lease document with required revisions or conditions that are not acceptable to the proposed lessee, the proposed lessee may appeal the determination according to the procedures set forth in Section 314 of these Regulations.

WIND ENERGY EVALUATION LEASES (WEELS)

621. Definition of Wind Energy Evaluation Leases (WEELS). Wind energy evaluation leases (WEELS) are short-term leases that authorize possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and

622. Term of Wind Energy Evaluation Leases (WEELS). A WEEL must provide for a definitive term that is no longer than three (3) years, and with one renewal period not to exceed three (3) years. The lessee's exercise of the option to renew the WEEL must be in writing and must specify (i) the time and manner in which the option may be exercised or is automatically effective; and (ii) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term. These requirements are generally consistent with the BIA's requirements for the term of a WEEL under 25 CFR 162.512.

623. Mandatory Provisions of WEELS. A WEEL must contain all of the following:

- (a) Identification of the tract or parcel being leased by reference to a public or private survey, if possible, and if not possible, then by one or more of the following: (i) a legal description; (ii) a survey-grade global positioning system description; or (iii) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Identification of the purpose of the WEEL and authorized uses of the leased premises.
- (c) Statement of the term of the WEEL.
- (d) Identification of the ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements.
- (e) Statement of rent and any other lessee payment requirements and late payment charges, including interest.
- (f) An equipment installation plan must be submitted to the Tribe by the intended lessee under a WEEL for review and approval showing the location of proposed permanent improvements,

identifying the types of proposed improvements, and the schedule for site preparation, construction and installation of improvement or equipment, including any plans for phase development. Material changes to the initial equipment installation plan require that a revised equipment installation plan be provided to the Tribe for review and approval.

- (g) Identification of due diligence requirements that require: (i) that the lessee install testing and monitoring facilities within 12 months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and (ii) if installation does not occur, or is not expected to be completed, within the time period specified in requirement (i) above, that the lessee provide the Tribe with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities. The WEEL must also specify the lessee's exposure to sanctioning consequences for failure to comply with the due diligence requirements.
- (h) If the WEEL is executed by party representatives, identification of the party represented and the authority under which the action is taken.
- (i) Statement that 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 federal trust or restricted status.
- (j) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.
- (k) Statement that the lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (l) Statement that 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 WEEL, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the lessee with contact the Tribe to determine how to proceed and appropriate disposition.
- (m) Statement that the Tribe has the right, at any reasonable time during the term of the WEEL, and upon reasonable notice to enter the leased premises for inspection.
- (n) Statement that any failure by a lessee to cooperate with a Tribal request to make appropriate records, reports or information available for Tribal inspection and duplication may be treated as a violation of the WEEL.
- (o) Statement that the lessee holds the Tribe and the United States harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises.
- (p) Statement that the lessee indemnifies the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the WEEL, regardless of fault, with the exception that the lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's negligence or willful misconduct.

624. Optional But Not Mandatory Elements of WEELs.

- (a) Noncompeting Compatible Uses. A WEEL may authorize others to use part of the leased premises for other noncompeting uses compatible with the purpose of the WEEL, such as grazing or storage, provided that any such use by others will not reduce or offset the monetary compensation due to the Tribe for the WEEL.
- (b) Option for a WSR Lease. A WEEL may provide for an option period following the expiration of a the WEEL term during which the lessee and the Tribe may enter into a WSR lease, provided that approval of a WEEL that contains an option to enter into a WSR lease does not guarantee or imply approval of any WSR lease.
- (c) Valuation. A valuation may be used to set the compensation due for a WEEL, but a valuation is not required for a WEEL.
- (d) Performance Bond or Other Security. A performance bond or alternative form of security is not required for a WEEL.
- (e) Insurance. While normally a lessee must provide insurance for a WEEL, the insurance requirement may be waived if the WEEL is for less than fair market value or for nominal compensation, or if the Tribe determines that a waiver of insurance is in its best interest.

625. How Ownership of Permanent Improvements Will Be Addressed in a WEEL. A WEEL must specify who will own any permanent improvements the lessee installs during the term of the WEEL and also must indicate whether any permanent improvements the lessee installs under the WEEL: (i) Will remain on the premises upon expiration, termination or cancellation of the WEEL in a condition satisfactory to the Tribe; (ii) May be conveyed to the Tribe during the WEEL term and under what conditions the permanent improvements may be conveyed; (iii) Will be removed within a time period specified in the WEEL, 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 (iv) Will be disposed of by other specified means. A WEEL that requires the lessee to remove the permanent improvements must also provide the Tribe with an option to take possession and title to the permanent improvements if the improvements are not removed within the specified time period.

626. Ownership and Handling of Energy Resource Information Obtained Under a WEEL. The WEEL must specify the ownership of any energy resource information the lessee obtains at the leased premises during the WEEL term. Unless otherwise specified in the WEEL, the energy resource information the lessee obtains through the leased activity becomes the property of the Tribe at the expiration, termination, or cancellation of the WEEL or upon failure of the lessee to diligently install testing and monitoring facilities on the leased premises within the time periods specified in the due diligence provisions of Section 605(g) herein. The Tribe will keep confidential any energy resource information it is provided under the WEEL that is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

627. Documents Required for Tribe's Approval of a WEEL. A lessee of the intended premises must submit the following documents to the Tribe in order to obtain the Tribe's approval of the WEEL:

- (a) A WEEL executed by the lessee that meets the requirements for a WEEL set forth in this Chapter;
- (b) Proof of insurance in amounts sufficient to protect all permanent improvements on the leased premises, which may include property, liability, and casualty insurance, and identifying the Tribe, any Indian landowners, and the United States as additional insured parties, unless the insurance requirement has been waived by the Tribe;
- (c) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and Tribal environmental and land use requirements for business site leases;
- (d) An equipment installation plan;
- (e) A restoration and reclamation plan (and any subsequent modifications to the plan);
- (f) Documents that demonstrate the technical capability of the lessee or lessee's agents to construct, operate, maintain and terminate the proposed project and the lessee's or the lessee's agents' ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (g) A legal or equivalent description of the land proposed for the premises;
- (h) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity (other than a Tribal entity), information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that: (i) The representative has authority to execute the WEEL lease document; (ii) The WEEL will be enforceable against the lessee; and (iii) The legal entity is in good standing and authorized to conduct business in California, the state where the land is located.

628. Tribe's Approval Process for a WEEL.

- (a) As a critical preliminary step, the Tribe must determine that the WEEL is in the best interest of the Tribe. In making that determination, the Tribe will:
 - (1) Review the WEEL and supporting documents;
 - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances; and
 - (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements, including any other Federal or Tribal land use requirements.
- (b) Upon receiving the WEEL package of documents, the Tribe will promptly notify the proposed lessee by a written letter whether the package is or is not complete, i.e., whether or not it includes all the information and documents required for a WEEL. If the WEEL package is not complete, the notification letter will identify the missing information or documents required for a complete package. If the WEEL package is complete, the notification letter will acknowledge that the package was complete and that within 20 days of the date of receipt of the package at the Tribal office, the Tribe will either approve the WEEL or disapprove it and return the package with written instructions for required revision. The Tribe's determination of approval or

disapproval of the proposed WEEL, and the basis for such determination, will be provided to the proposed lessee in writing, along with a notification of appeal rights.

- (c) The Tribe will generally approve a proposed WEEL unless one of the following occurs: (i) The requirements in this Chapter applicable to WEELS have not been met; or (ii) The Tribe finds a compelling reason to withhold approval in order to protect the best interests of the Tribe. The Tribe will not unreasonably withhold approval of a proposed WEEL.
- (d) If the Tribe determines that the proposed WEEL is approved, fully executed copies of the WEEL will be provided to the lessee and lodged in the Tribe's official records.

629. **Effective Date of a WEEL.** A WEEL becomes effective as of the effective date specified in the WEEL document, or if the WEEL lease document does not specify an effective date, it becomes effective upon full execution by the parties.

630. **Recordation of a WEEL.** The Tribe shall forward all final executed WEEL lease documents to the BIA for recordation in the LTRO with jurisdiction over the Tribal lands promptly upon the Tribe's approval of the WEEL.

631. **Amendment, Assignment, Subleasing or Mortgaging a WEEL.** The parties may amend, assign, sublease, or mortgage a WEEL only by following the procedures and meeting the requirements for amending, assigning, subleasing, or mortgaging a wind and solar resources (WSR) lease set forth in Sections 608 through 615 of these Regulations.

632. **Tribal Investigation of Compliance with a WEEL.** The Tribe has the authority to direct a designated officer, employee or agent to 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 determine if the lessee is in compliance with the applicable requirements of the WEEL and to protect the interests of the Tribe and of any Indians holding assignments of land nearby the leased premises. If an Indian landowner notifies the Tribe that a specific violation of the WEEL has occurred, the Tribe will promptly initiate an appropriate investigation.

633. **Abandonment of the Leased Premises.** If a lessee abandons the leased premises, the Tribe will treat the abandonment as a violation of the WEEL. The WEEL may specify a period of non-use after which the leased premises will be considered abandoned.

634. **Tribal Procedures for Handling Violations of a WEEL Lease.** If the Tribe determines that the lessee is in violation of an obligation placed on the lessee in the WEEL, the Tribe will follow the procedures set forth below:

- (a) If the lessee is in violation of the WEEL for failure to pay rent or other required compensation in the time and manner required by the WEEL, the Tribe will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested, that requires the lessee to promptly cure the violation by making the required payment and to provide the Tribe with adequate proof of payment.

- (b) If the lessee is in violation of a WEEL for failure to fulfill an obligation other than payment of rent or other required compensation, the Tribe will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested, that will advise the lessee that within 10 business days of the receipt of a notice of violation that the lessee must cure the violation and notify the Tribe in writing that the violation has been cured, or request additional time to cure the violation, or dispute the Tribe's determination that a violation has occurred.
- (c) If the lessee does not cure a violation of a WEEL within the required time period, or provide adequate proof of payment as required in the notice of violation, the Tribe will determine whether: (i) The Tribe should cancel the WEEL; or (ii) Grant the lessee additional time in which to cure the violation; or (iii) Invoke other remedies available under the WEEL or applicable law, including collection on any available performance bond or other debt collection measures available to the Tribe for unpaid compensation and any late payment charges.
- (d) If the Tribe decides to cancel the WEEL, the Tribe will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of the Tribe's decision. The cancellation letter will: (i) Explain the grounds for cancellation; (ii) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the WEEL; (iii) Notify the lessee of the lessee's right to appeal the cancellation and request a re-hearing; (iv) Order the lessee to vacate the property within 30 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and (v) Order the lessee to take any other action the Tribe deems necessary to protect the Tribe.

635. Tribal Procedures if a Lessee Remains in Possession of the Leased Premises After a WEEL Expires or is Terminated or Cancelled. If a lessee remains in possession of the leased premises after the expiration, termination, or cancellation of a WEEL and does not enter into a WSR lease for the leased premises, the Tribe may treat the unauthorized possession as a trespass under applicable law, and the Tribe may take action to recover possession of the leased premises and pursue any additional remedies available under applicable law, such as forcible entry and unlawful detainer action.

636. Appeals of Decisions on WEELs or Other WEEL Lease Documents. If the Tribe makes a determination not to approve a proposed WEEL or a proposed amendment, sublease, assignment or encumbrance of a WEEL, or to approve the proposed WEEL or other WEEL lease document with required revisions or conditions that are not acceptable to the proposed lessee, the proposed lessee may appeal the determination according to the procedures set forth in Section 314 of these Regulations.
