



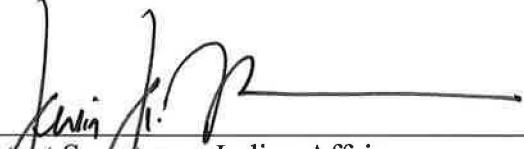
**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**

APPROVAL OF

**MAKAH INDIAN TRIBE
TRIBAL LAND LEASING REGULATIONS**

The attached Makah Indian Tribe Tribal Land Leasing Regulations, submitted by the Makah Indian Tribe (listed in the Federal Register, 80 FR 1944 (Jan. 14, 2015) as the Makah Indian Tribe of the Makah Indian Reservation), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 16 pages and adopted by the Makah Tribal Council on May 4, 2015, is hereby approved.

Dated: AUG 18 2015



Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Makah Indian Tribe

Tribal Land Leasing Regulations

CHAPTER ONE INTRODUCTION

§ 1.1 Purpose. The purposes of these regulations are to:

- (a) Recognize the sovereign authority of the Makah Indian Tribe to issue, review, approve, and enforce Leases of Makah Tribal Land for housing, business, economic development, renewable energy development, and other purposes; and to establish procedures for leasing of Makah Tribal Land;
- (b) Promote self-determination, encourage economic self-sufficiency, support development of housing, facilitate business activity and employment; and protect the environment within the Makah Indian Reservation; and to
- (c) Implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), H.R. 205, 112 Cong. (2012).

§ 1.2 Scope. These regulations apply solely to the leasing of land that is held in Trust or Restricted Status for the Makah Indian Tribe by the United States. These regulations do not apply to Fee Land owned by the Makah Indian Tribe or to land owned by individuals within the Makah Indian Reservation, whether Indian or non-Indian. These regulations apply only to surface leasing of Makah Tribal Land for residential, business, renewable energy, recreational, educational, and other purposes authorized under 25 U.S.C. 415(a) and the HEARTH Act. These regulations do not apply to traders' licenses, timber contracts, grazing permits, agricultural leases, mineral or subsurface leases, leases of water rights, or rights-of-way.

§ 1.3 Applicable Law and Consent to Jurisdiction. These regulations, and any Lease entered into pursuant to these regulations, shall be subject to Makah Tribal Law and applicable federal law. State law shall not apply to any Lease unless expressly authorized by federal statute or by the express written authorization of the Tribal Council. Entry into a Lease under these regulations shall constitute consent by Lessee to the regulatory and adjudicatory jurisdiction of the Makah Indian Tribe and the Makah Tribal Court.

CHAPTER TWO DEFINITIONS

For purposes of these regulations, the following definitions apply:

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.

BIA means the United States Department of the Interior, Bureau of Indian Affairs.

Business Lease means a Lease for a business or commercial purpose; however, a Lease that is a Residential Lease or a Lease for public, religious, educational, or recreational purposes shall not be considered or treated as a Business Lease.

Environmental Division Manager means the manager of the Environmental Division of the Makah Indian Tribe.

Fair Market Value means the amount of rental income that a Lease would most probably command in an open and competitive market, as determined by a market analysis, appraisal, or other appropriate valuation method, or as determined by competitive bidding.

Fee Land means land that is owned in unrestricted fee status, and is thus freely alienable by the owner.

Holdover means circumstances in which a Lessee remains in possession of the Leased premises after the Lease term ends or expires.

Lease means a written contract between the Makah Indian Tribe and a Lessee, whereby the Lessee is granted a right to possess Makah Tribal Land for a specified purpose and duration. The Lessee's right to possess will limit the Makah Indian Tribe's right to possess the Leased premises only to the extent and only on the terms provided in the Lease.

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

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.

Lessee means any person or entity who has acquired a legal right to possess Makah Tribal Land by a Lease or other Lease Document under these regulations.

Makah Tribal Land means the surface estate of land held by the United States in trust for the Makah Indian Tribe; land held by the Makah Indian Tribe and subject to federal restrictions against alienation or encumbrance; and land held by the United States in trust for any corporation chartered by the Makah Indian Tribe under Section 17 of the Indian Reorganization Act.

Mortgagee means the holder of a Leasehold Mortgage.

Notice of Cancellation means a written notice to the Lessee that the Lease is cancelled due to the existence of an uncured default by the Lessee.

Notice of Violation means a written notice to the Lessee of a violation of the Lease and providing the Lessee with a specified period of time to cure the violation or be subject to cancellation of the Lease.

Public for purposes of the Environmental Review Process described in Chapter Six of these regulations means the applicant for the Lease, any member of the Makah Indian Tribe, and any person or entity that resides within the Makah Indian Reservation.

Realty Officer means the Director of the Makah Realty Office, or his or her authorized designee.

Residential Lease means ground Leases (undeveloped land) and Leases of developed land (together with the permanent improvements thereon) on Makah Tribal Land, for housing purposes.

Secretary means the Secretary of the Interior.

Significant Effect on the Environment means a substantial adverse impact to the environment within the Makah Indian Reservation, including to the land, air, water, forest, fish or wildlife, fish or wildlife habitat, or cultural or archaeological resources.

Space Lease means a Lease of space within existing facilities located on Makah Tribal Land.

Sublease means a written agreement by which the Lessee grants to an individual or entity the right to possession no greater than that held by the Lessee under the Lease.

Tribal Council means the Makah Tribal Council, the duly elected Constitutional governing body of the Makah Indian Tribe.

Tribal Law means the laws, regulations, rules, and ordinances duly enacted by the Tribal Council, as well as applicable tribal court rulings of the Makah Tribal Court.

Trust or Restricted Land means any tract of land held in Trust or Restricted Status.

Trust or Restricted Status means:

- (1) That the United States holds title to the tract in trust for the benefit of the Makah Indian Tribe; or
- (2) That the Makah Indian Tribe holds title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

WEEL (Wind Energy Evaluation Lease) means a short-term Lease that authorizes possession of Makah Tribal Land for the purpose of installing, operating, and maintaining instrumentation and associated infrastructure to evaluate wind resources for electricity generation.

WSR (Wind and/or Solar Resource) **Lease** means a Lease that authorizes possession of Makah Tribal Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure to harness wind and/or solar energy to generate and supply electricity for resale to a utility grid or to users within the local community.

CHAPTER THREE LEASE REQUIREMENTS.

§ 3.1 **Necessity of Lease.** Any person or legal entity, including any legal entity owned and/or operated by the Makah Indian Tribe, must obtain a Lease from the Makah Indian Tribe pursuant to these regulations in order to possess Makah Tribal Land.

§ 3.2 **Obtaining a Lease.** For all Leases authorized under these regulations, unless the Tribal Council has directed otherwise, prospective Lessees must contact the Realty Office to obtain information and initiate discussions on negotiating a Lease.

§ 3.3 **Lease Approval.** All proposed Leases are subject to the review and approval by the Tribal Council. No Lease shall be valid unless approved by the Tribal Council and executed by the Tribal Chairperson or an expressly authorized designee. Prior to its approval of a Lease, the Tribal Council shall receive, at a minimum, the following documents or information:

- (a) Proof of insurance;
- (b) Documentation evidencing the financial and technical capability of the Lessee to construct, operate, maintain, and terminate the proposed project;
- (c) If the Lessee is a corporation, limited liability company, partnership, or other legal entity, documentation evidencing the valid organization or creation of the entity, that the entity's representative has legal authority to execute a Lease on behalf of the entity, and that the entity remains in good standing in the jurisdiction in which it was created;
- (d) Plan of development that describes the type and location of any permanent improvements the Lessee plans to construct and a schedule showing the proposed commencement and completion dates for the improvements;
- (e) Documentation evidencing completion of all required environmental review required by these regulations.

Submission of additional information regarding a proposed Lease may be required if deemed necessary by the Tribal Council. Any of these documentation requirements may be waived where a Lessee is an entity owned or operated by the Makah Indian Tribe, or where the Tribal Council deems that waiver is otherwise appropriate.

§ 3.4 Term of Lease and Renewal.

- (a) The term of a Residential Lease and of a Lease for public, recreational, religious, or educational purposes shall not be more than 75 years.
- (b) The term of a WEEL shall not be more than 3 years, except that any WEEL with an initial term of 3 years or less may include an option to renew for one additional term of 3 years or less. The Lessee shall provide written notice to the Realty Officer of its intent to exercise an option to renew no less than six months before the WEEL is due to expire.
- (c) The term of all other Leases under these regulations shall not be more than 25 years, except that any Lease with an initial term of 25 years or less may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall provide written notice to the Realty Officer of its intent to exercise an option to renew no less than six months before the Lease is due to expire.
- (d) All Leases must expressly provide for a definite term and state whether there is an option to renew. If there is an option to renew, there must be a definite term for the renewal period.

§ 3.5 Mandatory Lease Terms. At a minimum, all Leases must include:

- (a) A survey or legal description of the tract, parcel, or location of land being Leased that is of sufficient detail and completeness to accurately locate and identify the land being Leased;
- (b) The purpose of the Lease and the authorized uses of the Leased premises;
- (c) The parties to the Lease and an address to which written notices may be sent to the parties;
- (d) The term of the Lease;
- (e) The ownership of the permanent improvements and the responsibility for constructing, operating, maintaining, managing, and removal of permanent improvements;
- (f) Rental and other payment requirements and late payment charges, including interest as provided by Section 3.9(f) of these regulations;
- (g) Due diligence requirements, if applicable;
- (h) Insurance requirements, if applicable;

- (i) Performance bond requirements, if applicable; and
- (j) Indemnification requirements.

§ 3.6 Mandatory Lease Provisions. Except as may be provided otherwise herein, all Leases must include the following provisions:

- (a) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the Leased premises;
- (b) The Lessee must comply with all applicable federal law and Makah Tribal Law;
- (c) If historic properties, archaeological 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 must contact the Makah Tribal Historic Preservation Officer or other person designated by the Tribal Council to determine how to proceed and appropriate disposition;
- (d) The Makah Indian Tribe, acting through its Realty Officer or other authorized official, 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 with the requirements of the Lease, Makah Tribal Law, and other applicable laws;
- (e) The Makah Indian Tribe may, at its discretion, treat as a Lease violation any failure by the Lessee to cooperate with a request by the Makah Indian Tribe to make appropriate records, reports, or information available for the Makah Indian Tribe's inspection and duplication.

In its discretion, the Tribal Council retains the authority to waive any of the mandatory Lease provisions described herein on a case-by-case basis.

§ 3.7 Renewable Energy Lease Additional Provision. In addition to the provisions of Section 3.6 above, any Lease for renewable energy development, including any WSR Lease, must state who is responsible for evaluating the Leased premises for suitability; purchasing, installing, operating, maintaining, and removing renewable energy infrastructure and equipment; negotiating power purchase agreements; and transmission.

§ 3.8 Effective Date of Lease Documents. All Lease Documents must state the effective date of the Lease Document.

§ 3.9 Payment Requirements.

- (a) Leases may provide for any payment amount negotiated between the Makah Indian Tribe and the Lessee, so long as the Tribal Council determines that accepting such negotiated compensation is in the best interest of the Makah Indian Tribe. Prior to approving a Lease, and for the purpose of making an informed decision, the Tribal Council may require a market analysis, appraisal, competitive bidding, or other appropriate valuation method to determine the Fair Market Value of a Lease.
- (b) Leases may be structured at a flat Lease rate, or based on a percentage of gross receipts, or a combination of a flat Lease rate plus a percentage of gross receipts, or any other compensation structure that the Tribal Council deems to be in the best interest of the Makah Indian Tribe.
- (c) Leases for public purposes, such as religious, recreational, educational, cultural, and public housing developments, may provide for nominal compensation if the Tribal Council deems it in the best interest of the Makah Indian Tribe.
- (d) Leases shall clearly state the payment amount, the dates on which all payments are due, the forms of payment that will be accepted, and where payments shall be made or sent.
- (e) Leases may provide for periodic review and adjustment of payment amounts.
- (f) Unless the Lease expressly provides otherwise, if any rents payable under the Lease are not received within ten (10) calendar days after becoming due, interest at the rate of twelve (12) percent per annum will accrue and become due and payable from the date such rentals are due until such payment is received by the Tribe.

§ 3.10 Improvements.

- (a) The Lessee may construct permanent improvements if provided for in the Lease. The Lease must include or attach a plan that describes the type and location of any permanent improvements to be constructed by the Lessee, who will own any permanent improvements during the term of the Lease, and the Lease must also include a general schedule for construction of the permanent improvements, including proposed dates for commencement and completion of construction.
- (b) Unless otherwise provided in the Lease, any permanent improvements to the Leased premises shall become the property of the Makah Indian Tribe upon the expiration, cancellation, or termination of the Lease—including any energy resource information the Lessee obtains during a WEEL term.

- (c) The Lease shall indicate whether each specific permanent improvement will:
 - (1) Remain on the Leased premises, upon the expiration, cancellation, or termination of the Lease;
 - (2) Be removed within a time period specified in the Lease, at the Lessee's expense; or
 - (3) Be disposed of by other specified means.
- (d) If the Lease provides for removal of permanent improvements within a time period specified in the Lease, the Lease shall also provide for appropriate restoration and reclamation of the Leased premises.

§ 3.11 Due Diligence Requirements.

- (a) If permanent improvements are to be constructed, the Lease must require the Lessee to complete construction of any such permanent improvements within the schedule specified in the Lease or plan of development, and provide a process for changing the schedule by mutual consent of the parties.
- (b) In addition to section 3.11(a) above, a WEEL must require the Lessee to:
 - (1) 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
 - (2) If installation does not occur or is not expected to be completed within the time period specified in section 3.11(b)(1) above, provide the Tribal Council and the Realty Officer 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.
- (c) In addition to section 3.11(a) above, any Lease for renewable energy development, including any WSR Lease, must require the Lessee to:
 - (1) Begin installation of energy facilities within 2 years of the effective date of the Lease or other period designated in the Lease and consistent with the plan of development; and
 - (2) If installation does not occur within the time period specified in section 3.11(c)(1) above, provide the Tribal Council and the Realty

Officer with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward beginning the installation.

- (3) Maintain all on-site electrical generation equipment, facilities, and related infrastructure in accordance with the design standards in the development plan; and
- (4) Repair, place into service, or remove from the site within a time period specified in the Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the Lease—unless the equipment or facilities were idle as a result of planned suspension of operations.

§ 3.12 Insurance. Unless waived by the Tribal Council, a Lessee shall provide insurance to protect the interests of the Makah Indian Tribe and in an amount sufficient, at minimum, to protect all insurable improvements on the Leased premises. The Lessee may be required to provide property, liability, and/or casualty insurance or other insurance deemed necessary due to specific circumstances of the Lease. The Makah Indian Tribe and the United States must be identified as additional insured parties.

§ 3.13 Performance Bond. A Lease may, where appropriate, require the Lessee to obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Lease. Such bond shall be for the purposes of securing the Lessee's contractual obligations under the Lease and may guarantee the annual Lease payment, the estimated development cost of improvements, and any additional amount necessary to ensure compliance with the Lease. If required, the performance bond shall be in one of the following forms:

- (a) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (b) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (c) Negotiable Treasury securities; or
- (d) Surety bond issued by a company approved by the U.S. Department of the Treasury.

§ 3.14 Subleases, Assignments, and Amendments.

- (a) Unless the Lease expressly provides otherwise, Subleases, Assignments, and amendments of any Lease require the written consent and approval of the Tribal Council and the Lessee. The written consent and approval of the Tribal Council is not required for a residential Sublease, unless the Tribal Council expressly requires approval.

- (b) All terms of the Lease, including all restrictions and use limitations on the use of the premises shall apply to the Sublease or Assignment.
- (c) Notwithstanding the Sublease or Assignment, the original Lessee shall not be relieved from any of its obligations under the Lease without the express written approval of the Tribal Council.

§ 3.15 Leasehold Mortgage. A Lessee may encumber its leasehold interest with a Leasehold Mortgage. Unless the Lease expressly provides otherwise, the written consent and approval of the Tribal Council is required prior to obtaining a Leasehold Mortgage.

§ 3.16 Taxation.

- (a) Subject only to applicable Federal and Makah Tribal Law, permanent improvements on the Leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements are subject to taxation by the Makah Indian Tribe.
- (b) Subject only to applicable Federal and Makah Tribal Law, activities under a Lease conducted on the Leased premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use, privilege, public entity, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities under a Lease are subject to taxation by the Makah Indian Tribe.
- (c) Subject only to applicable Federal and Makah Tribal Law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests are subject to taxation by the Makah Indian Tribe.

§ 3.17 Preference. A Lease of Makah Tribal Land may include a provision requiring the Lessee to give a preference for employment of qualified Makah tribal members, based on their political affiliation with the Makah Indian Tribe.

§ 3.18 Access to Leased Premises. A Lease may address access to the Leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR part 169. Roads or other infrastructure within the Leased premises do not require compliance with 25 CFR part 169 during the term of the Lease, unless otherwise stated in the Lease.

§ 3.19 Possession Without A Lease. If an individual or entity takes possession of or uses Makah Tribal Land without a Lease required under these regulations, the unauthorized possession or use is a trespass. The Makah Indian Tribe may take action, as appropriate, to

recover possession, including but not limited to eviction, and pursue any additional remedies available under applicable law.

§ 3.20 Emergency Action. The Makah Indian Tribe may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm within the Makah Indian Reservation. Emergency action may include an order or directive from any of the Tribal Council, Tribal Chairperson, General Manager, Assistant General Manager, or the Makah Tribal Court, to immediately cease the activity resulting in or threatening the harm.

§ 3.21 Records.

- (a) The Realty Officer shall record all Lease Documents with the:

Land Title and Records Office
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, OR 97232-4169

- (b) The Realty Officer shall maintain copies of all Lease Documents and make them available, upon request, to the Tribal Council, General Manager, and Assistant General Manager, and the Lessee.

CHAPTER FOUR ENFORCEMENT

§ 4.1 Generally. The Makah Indian Tribe, acting through its authorized representatives, retains and shall have all powers necessary and proper to enforce the terms of any Lease Document, as well as all Makah Tribal Law.

§ 4.2 Entry and Investigation. The Makah Indian Tribe, acting through its Realty Officer or other authorized representatives, may enter the Leased premises at any reasonable time, and upon reasonable notice, to determine whether the Lessee is in compliance with the requirements of the Lease, Makah Tribal Law, and other applicable laws.

§ 4.3 Violations and Defaults. Unless a Lease expressly provides otherwise, the following shall apply:

- (a) If the Lessee is in violation of any term or condition of a Lease Document, the Realty Officer shall serve the Lessee with a Notice of Violation. Service of the Notice of Violation shall be accomplished through personal service on the Lessee or by sending the Notice of Violation to the Lessee by certified mail, return receipt requested.

- (b) If the Lessee has failed to pay rent or other compensation owed under the Lease Document, the Notice of Violation shall advise the Lessee that, within 10 calendar days of the Lessee's receipt of the Notice of Violation, the Lessee must cure the violation by paying the rent or other monies due and payable or be in default and subject to immediate Lease cancellation.
- (c) If the Lessee is in violation of any term or condition of the Lease Document, other than payment provisions covered in section 4.3(b) above, the Notice of Violation shall advise the Lessee that the Lessee must cure the violation within 30 calendar days of the Lessee's receipt of the Notice of Violation or be in default and subject to immediate Lease cancellation.

§ 4.4 Remedies. If the Lessee fails to cure the violation within the prescribed period, the Lessee is in default, and the Tribal Council may decide to:

- (a) Cancel the Lease pursuant to these regulations;
- (b) Grant an extension of time to cure the default;
- (c) Pursue any other remedies available, including execution on bonds or collection of insurance proceeds; or
- (d) Any combination of remedies listed above.

§ 4.5 Cancellation. If the Tribal Council decides to cancel a Lease due to an uncured default, the Tribal Chairperson shall serve the Lessee with a Notice of Cancellation. Service of the Notice of Cancellation shall be accomplished through personal service on the Lessee or by sending the Notice of Cancellation to the Lessee by certified mail, return receipt requested. The Notice of Cancellation shall:

- (a) Explain the grounds for cancellation;
- (b) Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
- (c) Notify the Lessee of its right to seek judicial review of the Lease cancellation; and
- (d) Order the Lessee to pay all amounts due and vacate the premises within 30 calendar days of the Lessee's receipt of the Notice of Cancellation.

Cancellation of the Lease shall become effective on the 31st day following the Lessee's receipt of the Notice of Cancellation.

§ 4.6 Negotiated Remedies. Nothing in these regulations shall preclude the Tribal Council from approving a Lease that contains alternative remedies negotiated with the Lessee. If an approved Lease contains negotiated remedies, those remedies will control in the event of a conflict with these regulations.

§ 4.7 Holdover. If a Lessee, without legal authorization, remains in possession of Makah Tribal Land after the expiration or cancellation of a Lease, such occupation of Makah Tribal Land shall be deemed a trespass. The Makah Indian Tribe may take any necessary action to recover possession and pursue additional remedies including, but not limited to, filing a trespass action or requesting the assistance of BIA to remove the trespasser.

§ 4.8 Authority of BIA. BIA retains authority, at the request of the Tribal Council and at BIA's discretion, to enforce provisions of, or cancel, a Lease Document in accordance with Federal law.

CHAPTER FIVE JUDICIAL REVIEW

§ 5.1 Jurisdiction. The Lessee may seek judicial review of the Tribal Council's determination to cancel a Lease by filing an action in the Makah Tribal Court within twenty (20) calendar days of the Lessee's receipt of the Notice of Cancellation. Nothing in this section or in these regulations shall permit or provide jurisdiction for any cause of action for money damages.

§ 5.2 Scope of Review. The scope of the Tribal Court's review shall be limited to whether the cancellation was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence; or otherwise not in accordance with the law. The Court shall not conduct a de novo review. Judicial review shall be limited to the record of the Council's decision, which shall include the Notice of Cancellation.

§ 5.3 Effect of Judicial Review. Unless agreed in writing by the Tribal Council, or otherwise ordered by the Tribal Court, the filing of an action in Tribal Court shall not change the effective date of the Lease cancellation or otherwise alter the Lessee's obligation to vacate the premises in accordance with the Notice of Cancellation. If the Court grants a request to stay the effective date of the cancellation and permits the Lessee to remain on the premises, the Lessee shall be required to continue to pay rent and honor all terms and conditions of the Lease for as long as the Lessee remains in possession.

CHAPTER SIX ENVIRONMENTAL REVIEW PROCESS

§ 6.1 Requirement of Environmental Review. No Lease shall be approved until the environmental review process outlined in this chapter is completed.

§ 6.2 Lessee's Environmental Statement. Prior to seeking the Tribal Council's approval of a Lease, the prospective Lessee shall provide the Makah Indian Tribe's Environmental Division Manager ("ED Manager") with a written preliminary environmental statement that describes all of the following that may occur as a result of the proposed Lease and/or activities conducted under the proposed Lease: (a) anticipated ground disturbance; (b) anticipated quantity of water use and the source of such water; (c) potential discharges into waters or wetlands; (d) potential emissions resulting from construction or operations; and (e) potential impact to fish or wildlife. The prospective Lessee shall certify that the information in the preliminary environmental statement is complete and accurate to the best of its knowledge.

§ 6.3 Threshold Determination.

- (a) Following review of the preliminary environmental statement, and any other information relevant to the potential environmental impacts of the leasing decision, the ED Manager shall make a threshold determination of whether the proposed leasing decision could have a Significant Effect on the Environment within the Makah Reservation.
- (b) If the ED Manager determines that the proposed leasing decision would not result in any change in use of the land or premises proposed for leasing, the ED Manager shall document that determination in writing and the environmental review process shall be complete. A change in either the type or intensity of use shall be considered a change in use.
- (c) If the ED Manager determines that the proposed leasing decision could not have a Significant Effect on the Environment, the ED Manager shall document that determination in writing and the environmental review process shall be complete.
- (d) If the ED Manager determines that the proposed leasing decision could have a Significant Effect on the Environment, the ED Manager shall prepare an environmental impact report and provide for public notice and comment as described in this chapter.

§ 6.4 Environmental Impact Report. The ED Manager shall prepare or cause to be prepared a written Tribal Environmental Impact Report ("TEIR") which describes the potential Significant Effects on the Environment of the proposed leasing decision. The level of detail and depth of analysis should be limited to the minimum needed to adequately document and describe the potential Significant Effects on the Environment resulting from the proposed leasing decision. There is no obligation to consider or analyze alternatives to the proposed leasing decision in the TEIR. The TEIR may, but is not required to, propose potential mitigation measures that could lessen or eliminate any identified Significant Effects. The TEIR shall, at a minimum, contain a discussion of:

- (a) A description of the current environmental conditions on and in the vicinity of the Leased premises; and

- (b) A description of all Significant Effects on the Environment that are likely to occur as a result of the proposed leasing decision.

§ 6.5 Notice of Completion. Upon completion of the TEIR, the ED Manager shall draft and publish a Notice of Completion that shall include the following information:

- (a) A brief description of the proposed leasing decision and activities proposed under the Lease;
- (b) The location of the proposed Lease and leasing activities;
- (c) Notification that copies of the TEIR are available at the Makah Tribal Center and the Realty Office; and
- (d) Notification of a deadline for public comments on the TEIR, which shall expire thirty (30) days from the date of the Notice of Completion; and
- (e) The address to which such public comments should be sent.

§ 6.5 Public Notice. For public notice purposes, the Notice of Completion shall be published in a newspaper of general circulation within the Makah Indian Reservation and posted in a location visible to the general public at the Makah Tribal Center and the Realty Office.

§ 6.6 Response Report. The public shall have the opportunity to submit comments on the TEIR for a period of thirty (30) calendar days from the date of the Notice of Completion. After the thirty (30) day comment period has ended, the ED Manager shall review all comments received from the public and shall prepare a single written response report that summarizes the relevant substantive comments received and the ED Manager's response to such comments. The ED Manager shall send a copy of the response report to all persons who submitted public comment if the commenter provided a mailing address.

§ 6.7 Submission to Tribal Council. The ED Manager shall provide a copy of the TEIR and response report to the Realty Officer, and the Realty Officer shall include the TEIR and response report when it submits the proposed Lease to the Tribal Council for review.

§ 6.8 Discretion of Tribal Council. Nothing in this Chapter prevents or precludes Tribal Council approval of a Lease Document that will have Significant Effects on the Environment. The purpose of this Chapter is to provide a process to adequately inform the public and the Tribal Council of potential Significant Effects on the Environment. Nor does this Chapter provide any legal cause of action or right to challenge the Tribal Council's discretionary decision whether to approve or not approve a Lease Document.

§ 6.9 Records. The Environmental Division shall maintain all records pertaining to the environmental review of each leasing decision.

CHAPTER SEVEN EFFECTIVE DATE; AMENDMENT; SEVERABILITY

§ 7.1 Effective Date. These regulations shall take effect upon approval by the Secretary or the Secretary's authorized designee. These regulations do not affect the validity, legality, or terms of Lease Documents approved by the Secretary prior to the effective date of these regulations.

§ 7.2 Amendment. These regulations may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to these regulations must be submitted to and approved by the Secretary.

§ 7.3 Severability. If a court of competent jurisdiction determines that one or more provisions of these regulations are invalid, void, or unenforceable, the remainder of the regulations shall remain in full force and effect without regard to the invalid provision.

CHAPTER EIGHT SOVEREIGN IMMUNITY

§ 8.1 No Waiver of Sovereign Immunity. Nothing in these regulations shall act or be construed as a waiver of the Makah Indian Tribe's sovereign immunity in any action, in any court or forum, except with respect to judicial review under Chapter 5.

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