



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

APPROVAL OF

**CONFEDERATED TRIBES OF THE WARM SPRINGS
RESERVATION OF OREGON
BUSINESS LEASING ORDINANCE**

The attached Business Leasing Ordinance, submitted by the Warm Springs Tribe (listed in the Federal Register, 82 FR 4915 (Jan. 17, 2017) as the Confederated Tribes of the Warm Springs Reservation of Oregon), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 20 pages and adopted by the Warm Springs Tribal Council and certified by Michele Stacona, Secretary-Treasurer/CEO on May 4, 2017, is hereby approved.

Dated: JUN 11 2018

Principal Deputy Assistant Secretary – Indian Affairs
Exercising the Authority of the Assistant Secretary –
Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

RESOLUTION NO. 12,319

WHEREAS, Pursuant to Tribal Council Ordinance number 98, the Tribal Council adopted and enacted Business Leasing regulations codified as Chapter 413 of the Warm Springs Tribal Code ("Chapter 413"); and,

WHEREAS, Pursuant to Tribal Council Ordinance number 98, the Tribal Council directed the Secretary-Treasurer/CEO to execute and deliver Chapter 413 to the United States Department of Interior for review and approval pursuant to the Helping Expedite and Advance Responsible Tribal Home Ownership Act ("HEARTH Act"); and,

WHEREAS, The United States Department of the Interior has reviewed Chapter 413 and recommends approval of Chapter 413 under the HEARTH Act provided certain revisions are made to Chapter 413; and,


WHEREAS, Attached hereto as Exhibit "A" is an amended version of Chapter 413 of the Warm Springs Tribal Code, which amendment reflects the changes required by United States Department of the Interior to obtain its approval of Chapter 413 under the HEARTH Act; and,

WHEREAS, The Tribal Council has concluded that the adoption of a revision of Chapter 413 to obtain the approval of the United States Department of the Interior is appropriate to effectuate Ordinance No. 98 under the HEARTH Act; now, therefore,


BE IT RESOLVED, By the (27th) Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(a), (f), (l), (n), and (u) and Article VIII of the Tribal Constitution and By-laws, that the Tribal Council hereby adopts Chapter 413 of the Warm Springs Tribal Code as amended and set forth in Exhibit "A."

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon hereby certifies that the Tribal Council is composed of 11 members, of whom 10 constituting a quorum were present at a meeting thereof, duly and regularly called, noticed, convened and held this 1st day of May, 2017 ; and the foregoing resolution was passed by the affirmative vote of 7 members, 2 members abstained (out of the room), the Chairman not voting; and that the said resolution has not been rescinded or amended in any way.


Michele Stacona 5/4/17
Secretary-Treasurer/CEO

NOTED:


Floy L. Anderson 5-5-17
Acting BIA Superintendent

Attachment: Exhibit "A"

cc: Secretary-Treasurer/CEO
Superintendent
Administrative Services Center

WARM SPRINGS TRIBAL CODE

CHAPTER 413

BUSINESS LEASING

ORDINANCE NO. 98

WARM SPRINGS TRIBAL CODE

CHAPTER 413

BUSINESS LEASING

ORDINANCE NO. 98

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WARM SPRINGS TRIBAL CODE

CHAPTER 413

BUSINESS LEASING

ORDINANCE NO. 98

1. GENERAL

413.100 Authority and Delegation. The Tribe hereby authorizes and delegates to the Tribal Council and any tribal department or office that the Tribal Council may designate (“Authority”) the power and authority to lease any real property of the Tribe or lease space within existing facilities on tribal land that is not already leased in accordance with federal law and this Chapter, which laws shall govern any such Business Leases.

413.105 Scope.

(a) The scope of application of this Chapter shall be limited to all Business Leases approved pursuant to this Chapter and the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, H.R. 205, 112th Cong. (2012) (“HEARTH Act”) governing Business Leases on any tract, or interest therein, held in trust for the benefit of the Tribe, and to all actions and decisions taken in connection with those Business Leases.

(b) Nothing herein shall be construed to affect the terms and conditions of existing Leases approved prior to the effective date of this Chapter or to Leases approved by the Secretary of the Interior pursuant to 25 U.S.C. § 415.

(c) This Chapter shall not apply to: (i) Leases of land that is owned by individual landowners or held in unrestricted fee status; (ii) Leases for residential purposes; (iii) Leases for business purposes that are covered in 25 CFR Part 162, subpart E; and (iv) Leases for religious, educational, recreational, cultural, or other public purposes.

413.110 Purpose. The purposes of this Chapter are to:

(a) Recognize the authority of the Confederated Tribes of the Warm Springs Reservation of Oregon (the “Tribe”), by and through the Authority, to issue, review, approve, and enforce Business Leases and establish streamlined procedures for environmental review;

(b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Tribe; and

- (c) Implement the HEARTH Act, and this Chapter.

413.115 Short Title. This Chapter shall be known and cited as the “Business Leasing Chapter.”

2. DEFINITIONS

413.200 Definitions. As used in this Chapter, the capitalized terms set forth below shall have the following meanings:

(a) **“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 Business Lease.

(b) **“Authority”** means the Tribal Council, the Secretary-Treasurer, and any other tribal department or office that the Tribal Council may designate which is the governmental entity, or its designee, that has the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: Business Lease issuance, bond, Business Lease amendment or modification, subleasing, Business Lease assignment or transfer, tenant Business Leases and Business Lease terminations. The Authority has the statutory authority to give final approval for all Business Leases and has authority to delegate some or all of its authority to tribal agencies on behalf of the Tribe. Notwithstanding the foregoing, any Business Lease for a term that exceeds five (5) years is reserved to the Tribal Council for final approval unless delegated by resolution by Tribal Council.

(c) **“Best Interest of the Tribe”** means the balancing of interests in order to attain the highest economic income, provide incentives to increase economic development, preserve and enhance the value of Tribal Trust Land, increase employment and jobs on the Tribal Trust Land, and preserve the sovereignty of the Tribe.

(d) **“BIA”** means the Bureau of Indian Affairs, United States Department of the Interior.

(e) **“Business Lease”** means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration, which purpose shall be limited to the business and commercial purposes that are specifically stated in the Business Lease. The Lessee’s right to possess will limit the Lessor’s right to possess the leased premises only to the extent provided in the Business Lease.

(f) **“Change in Land Use”** means the change from residential to non-residential, commercial to industrial, or one industrial use to another that significantly differs from the former use.

(g) **“Development Period”** means the time period from when a Business Lease is executed to when improvements are expected to be substantially completed.

(h) **“Environmental Review Process”** means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a positive or negative environmental impact, including but not limited to Ordinance 74, the Integrated Resources Management Plan which contains an interdisciplinary and comprehensive impact review for activities that may impact the environment and imposes conditions and best management practices and which incorporates measures intended to comply with sensitive species and archaeological and historical resource protection and management.

(i) **“Environmental Reviewer”** means an official from the Tribe’s Branch of Natural Resources or as otherwise designated by the Tribal Council.

(j) **“Executing Official”** means the Secretary-Treasurer who shall execute all Business Leases of the Tribe and the Authority and take all necessary and proper action on Business Leases and Subleases including amendments, modifications, assignments and cancellations of Business Leases and Subleases.

(k) **“Fair Annual Lease Value”** means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified Business Lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgeably, and assuming consummation of a Business Lease contract as of a specified date and the passing of the Leasehold from Lessor to Lessee under conditions whereby:

- (1) Lessee and Lessor are typically motivated;
- (2) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
- (3) A reasonable time is allowed for exposure in the open market; and
- (4) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the Business Lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

(l) **“Holdover”** means circumstances in which a Lessee remains in possession of the leased premises after the Business Lease term expires.

(m) **“Lease”** means a written agreement or contract between the Lessor and a Lessee whereby the Lessee is granted a right to possess Tribal Trust Land for a specified purpose and duration. The Lessee’s right to possess will limit the Lessor’s right to possess the Leased premises only to the extent provided in the Lease.

(n) **“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.

(o) **“Leasing Decision”** in the context of the Environmental Review Process means the following type of Business Lease transactions that will be acted on by the Authority: Business Lease issuance, Business Lease amendment or modification, subleasing, Business Lease assignment or transfer and tenant Business Leases.

(p) **“Lessee”** means a person or entity who has acquired a legal right to possess Tribal Trust Land by a Business Lease pursuant to this Chapter.

(q) **“Lessor”** means the Authority, on behalf of the Tribe, who holds property title and conveys the right to use and occupy the property under a Business Lease agreement.

(r) **“LTRO”** means the Land Titles and Records Office of the BIA that has responsibility for maintaining records relating to the lands at issue.

(s) **“Public”** means the persons and agencies who have a definable, concrete interest that may reasonably be affected by a proposed Business Lease.

(t) **“Project”** means any economic development activity occurring on Indian lands that are leased pursuant to this Chapter.

(u) **“Significant Effect on the Environment”** means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.

(v) **“Space Lease”** means a Business Lease of space within existing facilities on tribal land that is not already leased.

(w) **“Sublease”** means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Lease.

(x) **“Tribe”** means the Confederated Tribes of the Warm Springs Reservation of Oregon.

(y) **“Tribal Council”** means the duly elected governing body of the Tribe pursuant to the Constitution.

(z) “**Tribal Trust Land**” means any tract, or interest therein, in which the surface estate is owned by the Tribe in Trust Status.

(aa) “**Trust Status**” means that the United States holds title to the tract or interest in trust for the benefit of the Tribe.

3. LEASE REQUIREMENTS

413.300 Terms and Conditions. Business Leases shall be governed by the standard terms and conditions set forth in the Business Lease agreement or equivalent document. The standard terms and conditions may be modified only with the approval of the Authority. The Lessee is responsible for understanding these terms and conditions.

413.305 Duration and Renewal. No Business Lease shall be approved more than 12 months prior to the commencement of the term of the Business Lease. The term shall not be more than 25 years, except that any such Business Lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The Lessee shall notify the Authority of the intent to renew, at least one year before such Business Lease is due to expire.

413.310 Obtaining a Lease. Information on obtaining a Business Lease shall be available from the Authority.

(a) All applicants for a Business Lease shall submit the following documents to the Authority:

- (1) Financial statement.
- (2) Site survey and legal description, if applicable.
- (3) Tribal environmental review where required.
- (4) Other documents as may be required by the Authority and pursuant to the Authority’s Business Leasing procedures.

(b) All Business Leases shall contain, at a minimum, the following provisions:

- (1) A description of the tract, location, or parcel of the land being leased with sufficient detail to meet the recording requirements of the LTRO.
- (2) The purpose of the Business Lease and authorized uses of the leased premises, which may not include exploration, development, or extraction of any mineral resources.
- (3) The parties to the Business Lease.

- (4) The term of the Business Lease.
- (5) The date on which the Business Lease is effective.
- (6) Identification of the responsible party for constructing, owning, operating, and maintaining any improvements to the Business Lease premises.
- (7) Indemnification of the United States and Lessor.
- (8) All requirements for rent and other compensation, as well as any requirements for late payments or interest, including the amount due, when it is due, to whom it must be paid, and the form of acceptable payments.
- (9) Due diligence, insurance and bonding requirements as provided in this Section.
- (10) Whether a plan of development or any construction schedule is required pursuant to Section 413.345 of this Chapter.
- (11) What reports, surveys, site assessments, or other information is needed to facilitate compliance with applicable tribal law relating to environmental protection, cultural resource protection, and land use requirements.
- (12) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, then the Business Lease must state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, then Lessee must pay all operation and maintenance charges that accrue during the Business Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."

(c) The Authority shall record Business Leases, Subleases, assignments, amendments, encumbrances, Leasehold Mortgages, renewals, modifications and cancellations with:

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

(d) The Authority is responsible for maintaining all records of all Business Leases and for disseminating recorded Business Lease documents to the Secretary-Treasurer and the Branch of Natural Resources.

(e) The Authority shall send a copy of these Business Leases and all amendments and renewals for information purposes only, to the Superintendent, Warm Springs Agency, Bureau of Indian Affairs, Box 1239, Warm Springs, OR 97761.

(f) The Authority shall send a copy of this Chapter and a Business Lease that allows for Business Lease payments directly to the Tribe to the Superintendent of the Warm Springs Agency, Bureau of Indian Affairs, and to the Northwest Regional Office, Bureau of Indian Affairs.

(g) Records of activities taken pursuant to this Chapter are the property of the United States, the Authority, and the Tribe. Records compiled, developed, or received by the Authority in the course of business with the BIA are the property of the Authority and the Tribe.

(h) Unless the Business Lease states otherwise, a Business Lease may include, consistent with tribal law, a provision to give Indian preference in hiring for employment purposes.

413.315 Space Leases. To the extent these Business Leases require approval pursuant to federal law and policies, space Business Leases shall be reviewed and approved pursuant to this Chapter.

413.320 Land Descriptions. Business Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. Space Leases shall contain adequate descriptions of the location and square footage of the space being leased and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

413.325 Appraisal: Local Studies:

(a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Authority utilizing the following data: improvement cost, replacement cost, earning capacity, sales and Business Lease data of comparable sites or by similar methodology as approved by the Authority and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Lease.

(b) Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust and shall be attached to every Business Lease.

413.330 Fair Annual Lease Value.

(a) No Business Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

- (1) The Business Lease is in the Development Period;
- (2) The Authority is providing an incentive for business to locate on Tribal Trust Lands, and must provide Business Lease concessions, Business Lease improvement credits, and Business Lease abatements to attract such businesses; or
- (3) The Authority determines such action is in the Best Interest of the Tribe.

(b) A Business Lease may be structured at a flat lease rate.

(c) A Business Lease may be structured at a flat lease rate plus a percentage of gross receipts.

(d) A Business Lease may be structured based on a percentage of gross receipts, or based on a market indicator.

(e) A Business Lease must specify the dates on which all payments are due.

(f) A Business Lease must specify that the Lessee shall make payments directly to the Authority.

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

(h) The Business Lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

(i) Business Leases may provide for periodic review of the adequacy of compensation or adjustment of the compensation to be paid under the Business Lease unless the Lessor determines that not having compensation reviews or adjustments is in the Best Interests of the Tribe. If the Business Lease provides for periodic compensation review or adjustment, the Business Lease shall specify how and when review will occur and adjustments will be made, who will conduct the review and make the adjustments, when adjustments will go into effect, and how disputes shall be resolved. Business Leases may be amended to allow for lease rate adjustments.

(j) The Authority shall keep written records of the basis used in determining the Fair Annual Lease value, as well as the basis for adjustments. These records shall be presented to the Lessee for its review and acceptance or non-acceptance and included in any Business Lease file.

413.335 Environmental Review Process. Unless exempted from this requirement under this Chapter, the Authority shall not approve a Business Lease until the proposed Lessee has completed the Environmental Review Process under Section 7 of

this Chapter. Business Leases approved and executed without complying with this section shall be null and void.

413.340 Insurance.

(a) A Lessee shall provide insurance necessary to protect the interests of the Lessor and in amounts sufficient to protect all insurable improvements on the premises.

(b) The insurance may include, but is not limited to, property, liability or casualty insurance or other insurance as specified in the Business Lease.

(c) The Lessor and the United States must be identified as additional insured parties.

(d) The Authority may waive this requirement if the waiver is in the Best Interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Best Interest of the Tribe.

413.345 Performance Bond.

(a) Unless waived in writing by the Authority in accordance with this Chapter, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the Business Lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Lease and may guarantee:

- (1) The annual Business Lease payment;
- (2) The estimated development cost of improvements; and
- (3) Any additional amount necessary to ensure compliance with the Business Lease.

(b) The Authority may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Tribe. The Authority shall maintain written records of waivers and reductions.

(c) The performance bond may be in one of the following forms:

- (1) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (2) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (3) negotiable Treasury securities; or

(4) surety bond issued by a company approved by the U.S. Department of the Treasury.

413.350 **Improvements.** All Business Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Lease.

(a) Lessee, at Lessee's expense or as otherwise provided in the Business Lease, may construct improvements under a Business Lease if the Business Lease specifies, or provides for the development of:

(1) a plan of development that describes the type and location of any improvements to be built by the Lessee; and

(2) a general schedule for construction of the improvements.

(b) Lessee shall provide the Authority written justification as to the nature of any delay, the anticipated date of construction of the improvements, and evidence of progress toward commencement of construction.

(c) When requested by the Authority or otherwise required in the Business Lease, Lessee shall further provide the Authority, in writing, an updated schedule for construction.

(d) Unless a Business Lease provides otherwise, Lessee shall be responsible for operating, maintaining, and managing any and all improvements on the premises.

(e) Failure of the Lessee to comply with the requirements of this Section 413.350 will be deemed a violation of the Business Lease and may lead to cancellation of the Business Lease pursuant to Section 5 of this Chapter.

(f) Improvements to the premises shall become the property of the Authority unless otherwise provided for in the Business Lease. Unless the Business Lease provides otherwise, Lessor shall have the option to require Lessee to remove all improvements from the leased premises and the Business Lease may specify the maximum time allowed for such removal.

(g) A Lessee may develop equity value in the improvements, and sell its interest in the Business Lease based on the equity value. The Authority has a right of first refusal to purchase the interest.

(h) The Business Lease may provide that at expiration, cancellation or termination of the Business Lease, the Lessor shall purchase improvements to the premises at fair market value.

(i) Improvements may be subject to taxation by the Tribe.

413.355 Subleases, Assignments, Amendments, Encumbrances, and Leasehold Mortgages.

(a) Subleases, assignments, amendments or encumbrances of any Business Lease, including a Leasehold Mortgage, shall be by written consent of the Authority and Lessee, unless otherwise provided herein.

(b) Any sublease, assignment, amendment, or encumbrance of a Business Lease must state the effective date of the document.

(c) The Business Leases may authorize Subleases and assignments, in whole or in part, without approval from the Authority and execution from the Executing Official, provided a copy of the Sublease or assignment is provided to the Authority and the following conditions, where applicable, are met and stated in the Business Lease:

(1) There is no event of default under the Business Lease or this Chapter;

(2) Any restrictions and use limitations on the use of the premises shall continue to apply to any subtenant or assignee;

(3) The proposed assignee or sublessee submits a current financial statement showing financial adequacy; and

(4) The Lessee shall not be relieved or released from any of its obligations under the Business Lease.

This Section 413.350(c) in no way relieves the parties from carrying out their duties under the Business Lease, which may contain additional restrictions and conditions.

(d) The Business Lease may authorize encumbrances, including a Leasehold Mortgage, to the Leasehold interest, but not the leased premises, for the purpose of financing to develop and improve the premises subject to approval by the Authority and execution from the Executing Official.

(e) If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the Business Lease without approval of the Authority or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the Business Lease. If the purchaser is a party other than the encumbrancer, approval by the Authority and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Business Lease.

4. BUSINESS LEASE MANAGEMENT

413.400 Management.

(a) Except where required otherwise by agreement or applicable law, the Authority shall manage all Business Leases to which this Chapter applies pursuant to the provisions of this Chapter.

(b) The Authority shall institute a business leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

413.405 Administrative Fees. The Authority may charge administrative fees for costs associated with issuing a Business Lease, Sublease, assignment, amendment, mortgage or other administrative transaction.

5. ENFORCEMENT

413.500 Generally. The Authority shall have all powers necessary and proper to enforce the Business Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

413.505 Defaults.

(a) If the Authority determines the Lessee is in default, the Authority shall send the Lessee a notice of default within five (5) business days of the determination. The notice of default may be provided by certified mail, return receipt requested.

(b) Within ten (10) days of the mailing, the Lessee shall:

(1) Cure the default and notify the Authority in writing that the default has been cured;

(2) Dispute the Authority's determination that the Business Lease is in default and explain why the Business Lease should not be cancelled; or

(3) Request additional time to cure the default.

413.510 Remedies.

(a) If the Lessee fails to cure the default within the prescribed period, the Authority may:

(1) Cancel the Business Lease pursuant to these regulations;

(2) Grant an extension of time to cure the default;

(3) Pursue other remedies, including without limitation execution on bonds, collection of insurance proceeds, filing a lawsuit in tribal court, or providing notice to the BIA to request that it, in its discretion, enforce the provisions of or cancel the Business Lease;

(4) Pursue any combination of remedies listed above; or

(5) Pursue any other remedy set forth in the Business Lease management plan or policy, including reaching a negotiated remedy with Lessee.

(b) If the Authority cancels a Business Lease, the Authority shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the Lessee by certified mail, return receipt requested. The cancellation letter shall:

(1) Explain the grounds for cancellation;

(2) Notify the Lessee of unpaid amounts, interest charges or late payment penalties due under the Business Lease;

(3) Notify the Lessee of its right to appeal; and

(4) Order the Lessee to vacate the premises within 30 days of mailing of receipt of the cancellation letter, if an appeal is not filed by that time.

(c) A cancellation shall become effective 31 days after mailing. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the Lessee shall make all requisite payments, as well as comply with the terms of the Business Lease.

(d) If the Authority decides to grant an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

413.515 Penalties. The Business Lease shall specify the rate of interest to be charged if the Lessee fails to make payments in a timely manner. The Business Lease shall identify additional late payment penalties. Unless the Business Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the Lessee from the Authority, and the failure to pay such amount shall be treated as a breach of the Business Lease.

413.520 Harmful or Threatening Activities. If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Authority may take appropriate emergency action.

413.525 Holdover. If a Lessee remains in possession after the expiration or cancellation of a Business Lease, the Authority shall treat such occupation as a trespass. The Authority shall take action to recover possession and pursue additional remedies.

413.530 Trespass. If a person occupies the premises without the Authority's approval, the Authority may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law or making a written request to the BIA for resolution under any applicable federal laws.

6. APPEALS

413.600 Appeals. The Lessee or interested party may appeal a determination of the Authority, within ten (10) days of the determination. Appeals may be filed with the Tribal Council or other hearing body as set forth in the Business Lease management plan or policy. Such appeals shall be effectuated by: a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

413.605 Scope of Review. The Tribal Council or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of the Tribal Council or other hearing body shall be final. Nothing in this Section is intended to modify dispute resolution procedures otherwise set forth in the Business Lease; for example, if a Business Lease provides for binding arbitration, then the provisions of this Section shall not apply unless the terms of the Business Lease permit recourse under this Section.

7. ENVIRONMENTAL REVIEW PROCESS

413.700 Generally. Unless exempt under this Chapter, the Authority shall not approve a Business Lease until the proposed Business Lease has completed the Environmental Review Process pursuant to this Section and applicable Tribal regulations. Business Leases approved and executed without compliance with this Chapter shall be null and void.

413.705 Threshold Determination.

(a) Lessee Not Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Tribe, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of applicable Tribal environmental regulations.

(b) Lessee Subject to Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural resources of the Tribe, the Lessee must fulfill the requirements of

the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

413.710 Action on Leasing Decision Subject to Completion of Environmental Review Process. If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Authority may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review Process in accordance with applicable Tribal environmental regulations.

413.715 Environmental Review Process.

(a) Unless an exemption applies or a Business Lease is otherwise not subject to the Environmental Review Process, then, before the execution of any Business Lease, the Authority shall cause the Branch of Natural Resources through the Resource Managers Interdisciplinary Team to review the characteristics of the Business Lease proposal to determine which approval process to follow: (a) project impact statement; (b) project assessment; or (c) small project assessment. Small project assessments are intended for small projects that are not expected to have any Significant Effects on the Environment and are provided to the Public for a ten (10) day comment period. A project assessment is intended to thoroughly evaluate and impose conditions on proposed management activities and typically results in the issuance of finding of no significant impact where federal funds are involved. A project impact statement is intended to address larger scale projects that require in-depth planning and analysis. A project assessment or project impact assessment (collectively "Assessment") shall include public scoping and 30-day Public review and comment period. They shall provide detailed information about the Significant Effect(s) on the Environment which the Business Lease is likely to have, and shall include a detailed statement setting forth all of the following:

(1) A description of the physical environmental conditions in the vicinity of the Project (the environmental setting and existing baseline conditions), as they exist at the time the notice of preparation is issued;

(2) All Significant Effects on the Environment of the proposed Business Lease;

(3) In a separate section:

(i) Any Significant Effect on the Environment that cannot be avoided if the Business Lease is executed; and

(ii) Any Significant Effect on the Environment that would be irreversible if the Business Lease is executed.

(iii) Any mitigation measures proposed, recommended, or required.

(b) In addition to the information required pursuant to subdivision (a), the Assessment shall also contain a statement indicating the reasons for determining that various effects of the Business Lease on the off-reservation environment are not significant and consequently have not been discussed in detail in the Assessment. In the Assessment, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

413.720 Notice of Completion of Draft Assessment.

(a) Within no less than thirty (30) days following the completion of the draft project assessment or project impact assessment, the Authority shall file a copy of the draft Assessment with the Tribe. The Authority shall also make the draft Assessment available to the Public for review and comment. The notice of the draft Assessment to the Tribe and Public shall include all of the following information:

- (1) A brief description of the Project;
- (2) The proposed location of the Project;
- (3) An address where copies of the draft Assessment are available; and
- (4) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft Assessment.

(b) To satisfy the requirement for public notice and opportunity to comment under 25 U.S.C. §415, the Authority will provide public notice by at least one of the procedures specified below:

- (1) Publication of the Authority's draft Assessment in a newspaper of general circulation in the area affected by the proposed Business Lease, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.
- (2) Posting of the Tribe's draft Assessment in the offices of the Tribe and the Authority with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

413.725 Response to Public Comments. After the thirty (30) day comment period has ended, the Authority will review all comments received from the Public. Prior to the approval and execution of the Business Lease, the Authority will provide responses to relevant and substantive Public comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing any such impacts.

8. SOVEREIGN IMMUNITY

Nothing in this Chapter shall be deemed to waive the sovereign immunity of the Tribe or any of its enterprises, authorities, officers, agents or employees.

9. EFFECTIVE DATE; AMENDMENT

413.900 **Effective Date.** This Chapter shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior.

413.905 **Amendment.** This Chapter may be amended by the Tribal Council. All substantive amendments to this Chapter must be submitted to and approved by the Secretary of the Interior.