



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

**APPROVAL OF
COW CREEK BAND OF UMPQUA TRIBE OF
INDIANS
LEASING ORDINANCE**

The attached Leasing Ordinance, submitted by the Cow Creek Band of Umpqua Tribe of Indians (listed in the Federal Register, Vol. 85, No. 20 FR 5463 (January 6, 2020) as the Cow Creek Band of Umpqua Tribe of Indians), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 13 pages and adopted by the Cow Creek Band of Umpqua Tribe of Indians on November 18, 2020, is hereby approved.

Dated: APR 26 2021

Bryan Newland
Principal Deputy Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
TRIBAL LEGAL CODE**

**TITLE 105
LEASING OF TRIBAL TRUST LAND
UNDER THE HEARTH ACT**

105-10 AUTHORIZATIONS AND DEFINITIONS

105-10-10 Authorization and Repeal of Inconsistent Legislation

The Cow Creek Band of Umpqua Tribe of Indians (the “Tribe”) is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984); the provisions of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act of December 29, 1982 (P.L. 97-391), as amended by the Cow Creek Band of Umpqua Tribe of Indians Distribution of Judgment Funds Act of October 26, 1987 (P.L. 100-139); and the Cow Creek Tribal Constitution, duly adopted pursuant to a federally-supervised constitutional ballot on July 8, 1991 (the “Tribal Constitution”).

Pursuant to Article III, Section 1 of the Tribal Constitution, the Cow Creek Tribal Board of Directors (“Board”) is the governing body of the Tribe. Pursuant to Article VII, Section 1(d) of the Tribal Constitution, the Board has the authority to “administer the affairs and assets of the Tribe...” Pursuant to Article VII, Section 1(i) of the Tribal Constitution, the Board has the power to “enact ordinances and laws governing the conduct of all persons or tribally-owned land; to maintain order and protect safety, health, and welfare of all persons within the jurisdiction of the Tribe; and to enact any ordinances or laws necessary to govern the administration of justice, and the enforcement of all laws, ordinances or regulations...” Pursuant to Article VII, Section 1(m) of the Tribe’s Constitution, the Board has the power to “purchase or accept any land or other property for the Tribe.” Pursuant to Article VII, Section 1(p) of the Tribe’s Constitution, the Board has the power to “deal with questions concerning the encumbrance, lease, use, management, assignment, zoning, exchange, mortgage, purchase, acquisition, sale, placement in trust and disposal of land and other assets owned by, or held in trust for, the Tribe; and regulate land use and development in areas within the Tribe’s jurisdiction.” Pursuant to Article VII, Section 1(t) of the Tribe’s Constitution, the Board has “such other powers and authority necessary to meet its obligations, responsibilities, objectives, and purposes as the governing body of the Tribe.” Pursuant to Article X of the Tribal Constitution, the Board has the Power to “establish a tribal judiciary system and provide or authorize support for that system.”

Pursuant to the foregoing and the Tribe’s retention of the full spectrum of sovereign powers, the Board has the authority, desires to and does hereby establish this Title 105 for the purpose of issuing Leases on Tribal Trust Land without prior approval from the Secretary of the Interior as authorized by the HEARTH Act, Pub.L. 111–22 (2009).

Any prior Tribal regulations, resolutions, orders, motions, legislation, codes or other Tribal law which are inconsistent with the purpose and procedures established by this Leasing of Tribal Trust Land Under the HEARTH Act Code are hereby repealed only to the extent necessary to implement this current Title. Leases issued under prior sections are to remain unaffected by this Title's passage until their expiration or reissuance under this Title.

105-10-20 Definitions

For the purposes of this Title 105, the words, terms, and phrases defined in this section shall have the meanings given to them in this Section.

“Agricultural Land” means Tribal Trust Land suited or used for the production of crops, livestock or other agricultural products, or Tribal Trust Land suited or used for a business that supports the surrounding agricultural community.

“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. Partial assignment is not applicable to agricultural Leases.

“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, preserve the sovereignty of the Tribe, and other interests as determined by the Board of Directors.

“BIA” means the Bureau of Indian Affairs.

“Board” means the Cow Creek Tribal Board of Directors.

“Business Lease” means Leases for commercial, industrial, retail, office, manufacturing, storage, biomass, waste-to-energy, religious, educational, recreational, cultural, or other public or business purposes not covered by other Lease terms or types specifically mentioned in this Title.

“Cancellation” mean an action to end a Lease issued under this Title.

“Designated Authority” means the Board, tribal individual, or tribal entity designated by the Board, authorized to perform the duties of a lessor on behalf of the Tribe, and to approve or disapprove each Lease transaction, including: Lease insurance, bonds, Lease amendments or modifications, Subleases, Lease assignment or transfer, tenant Leases, and terminations. Designated Authority may not be a non-tribal individual or entity.

“Director” means the Director of Natural Resources for the Cow Creek Band of Umpqua Tribe of Indians.

EXHIBIT A

“Environmental Review Process” means the process by which the Tribe assesses the environmental impact of proposed Lease activity on tribal natural and cultural resources as set forth by this Title 105.

“Executing Official” means the Tribal Administrator.

“Fair Annual Lease Value” means the most probable dollar amount a property should bring in a competitive, open market reflecting all conditions and restrictions of the specified Lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations.

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

“Landlord’s Lien” means a lien on all chattel, fixtures, permanent improvements, farm equipment, vehicles, farm animals, crops, structures, and any other saleable goods owned by a tenant or occupant responsible for rent, brought upon a Leased premises, to secure payment of rent or other fees owed by tenant or subtenant.

“Lease” means a written contract between the Board, Designated Authority, or Tribal Corporation 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.

“Lease Document” means any written Lease, amendment, assignment, sublease, 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 a person who holds a Lease or Sublease to a property.

“Lessor” means the Tribe or Tribal Entity holding the right to possess a property who Leases the right to another either through a Lease or Sublease.

“LTRO” means the Land Titles and Records Office of the Bureau of Indian Affairs, or successor.

“Permanent Improvements” means buildings, other structures, and associated infrastructure attached to the premises.

“Permit” means a written, non-assignable agreement between Lessor and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Trust or Restricted Land, for a specified purpose.

“Public” means any person or entity with the potential to be significantly affected by the Lease or the Lease activity.

“Significant Impact on the Environment” means substantial, or potentially substantial, adverse change in the environment, including air, water, mineral, flora, fauna, ambient noise, cultural areas and object of historic, cultural or aesthetic significance.

“Sublease” a written agreement by which the Lessee grants to an individual or entity a right to possession of all or part, but no greater than the rights held by the Lessee under the Lease.

“TEIR” means a Tribal Environmental Impact Report.

“Tribal Corporation” means any corporation organized under the laws of the Cow Creek Band of Umpqua Tribe of Indians and chartered under either section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or Tribal or state law.

“Tribal Trust Land” means the surface estate of any land tract held by the United States in trust for the Tribe. The term also includes the surface estate of any land, held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

“Tribe” means the Cow Creek Band of Umpqua Tribe of Indians.

“Trust or Restricted Land” means that the U.S. hold title to the tract in trust for the benefit of the Tribe; or the Tribe holds title to the tract, but can alienate or encumber it only with the approval of the U.S. because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

“WEEL” means a short-term Lease that authorizes possession of Tribal Trust Land for the purposes of installing, operating, and maintaining instrumentation, and associated infrastructure to evaluate wind resources.

“WSR” means Leases which authorize possession of Tribal Trust Land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure to harness wind and/or solar energy.

105-20 GENERAL PROVISIONS

105-20-10 Scope and Application of Title 105

This Title and any regulation hereunder apply only to Tribal Trust Land. These regulations **do not apply** to any land owned in fee, whether by the Tribe, a Tribal Corporation, or individual Indian, or to any allotted land. Further, this Title does not apply to Leases issued under prior leasing, housing, or realty codes. The provisions and procedures herein apply only to Leases issued

according to this Title. This Title provides provisions for long-term residential, business, agricultural, wind or solar resource Leases.

105-20-20 Relevant Leases

This Title allows for long and short-term Leases, permits, or Leasehold Mortgages, but **does not allow** mortgages of Tribal Trust Land and or mineral Leases. Without limitation this Title covers Leases related to business, agriculture, wind resources, solar resources, public use, religious/educational use, recreation, or residential use.

105-20-30 Lease Terms and Renewal

Under this Title, any Lease of Tribal Trust Land made for business, agricultural, or WSR may be issued for a maximum initial term of 25 years with an option to renew for two additional terms (each of which may not exceed 25 years), for a total of 75 years. A WEEL initial term may be no longer than three (3) years, with a single option to renew for an additional three (3) years.

Under this Title, any Lease of Tribal Trust Land made for public, religious, educational, recreational, or residential purposes may be issued for a maximum term of 75 years.

No Lease issued under this Title shall renew automatically. The Board must approve Lease renewals unless renewal authority is specifically delegated to another tribal entity at the issuance of the Lease. If a Lease includes an option to renew, it must specify:

- a) The time and manner in which the option must be exercised;
- b) Confirmation of the renewal will be submitted to the Secretary;
- c) The Lessee must provide notice of the renewal to the Tribe and any sureties or mortgagees;
- d) Provide any additional consideration that will be due upon exercise of the option; and
- e) Any other conditions for renewal.

The renewal must be recorded with LTRO.

105-30 LEASING

105-30-10 Lease Procedure

Any Lease issued under this Title may only be issued by the Board and executed by the Executing Official. Any amendments, addendum, assignment, Sublease, or Leasehold mortgage made after the initial issuance must be approved by the Board after review by legal counsel. The Board may, at its discretion, allow a Tribal Corporation to approve Subleases on its own authority. Such authority may be delegated at the issuance of the Lease or any time within the life of the Lease.

105-30-20 Required General Lease Provisions

All Leases issued under this Title must contain, at a minimum, the following provisions:

- The parties to the Lease;
- The term of the Lease;
- The effective date of the Lease;
- The purpose of the Lease and authorized uses of the Lease premises;
- A legal description of the land to meet the LTRO requirements;
- The amount of rent;
- The due date of rent;
- Who may receive rent payments;
- Acceptable forms of rent payment;
- Any applicable fees, including administrative fees, taxes, assessments, and if the Leased premises is within an irrigation project or drainage district, the Lessee must pay all operation and maintenance charges during the Lease term;
- Any required due diligence;
- Any bond requirements and terms;
- All insurance requirements;
- Indemnification of the United States, Tribe and Tribal Corporation from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased premises, and 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 Lease term, regardless of fault;
- Default and notice provisions;
- Development or construction plans; and
- All applicable reports, surveys, site assessments, or other documentation needed to facilitate compliance with applicable tribal environmental, cultural resources, and land-use requirements as appropriate;
- Compliance with all applicable Federal and Tribal laws, including a guarantee to avoid unlawful conduct, creation of a nuisance, illegal activity or negligent use or waste of the Leased premises;
- The obligations of the lessee and its sureties to the Tribe are also enforceable by the United States.

105-30-30 Agricultural Lease Provisions

Besides the minimum Lease terms listed above, Agricultural Leases must include at a minimum: (1) a guarantee to manage land in accordance with any agricultural resource management plan developed by the Tribe; (2) stipulate to or develop a conservation plan as appropriate; (3) a guarantee to provide environmental and archaeological reports as needed for compliance to Tribal and Federal environmental laws; and (4) if the Lessee is a corporation, partnership or other legal entity, it must provide documentation to show the Lease will be enforceable against it and that it will be able to perform all of the Lease obligations.

105-30-40 Leases Allowing Construction of Permanent Improvements

The Board may approve Leases allowing for the construction of permanent improvements upon the land. In such instances, the Lease must include a general construction plan and provisions designating: (1) final ownership of the improvements; (2) the party responsible for construction; (3) the party responsible for management, operation, and maintenance of the structure; (4) the party responsible for the removal of the structure if needed; and (5) possible waiver of removal by the Tribe.

105-30-50 Business, Agricultural, Wind or Solar Resource Leases

Any Lease issued for business, agricultural, wind or solar resource purposes, or any Lease issued with the intent of a significant construction or financial undertaking shall require due diligence. The Board or a Tribal Corporation must review financial statements, insurance policies, construction plans where applicable, and conduct an environmental review if necessary. If due diligence is made by a Tribal Corporation, the findings, including without limitation the financials, must be summarized and presented to the Board for final approval. Additional documents and assurances may be necessary as required by the Board.

105-30-60 WEEL and WRS Provisions

WEEL/WSR Leases shall require the Lessee to install testing and monitoring facilities consistent with a plan of development. If installation does not occur within the plan, the Lessee must provide the Tribe with an explanation of good cause. The Lessee must maintain all on-site equipment and facilities including repair or remove all improperly functioning equipment. The Lease must also state which party is responsible for evaluating the Leased premises and who is to own the energy resources derived from the Lease or Leased activity.

105-30-70 Assignments, Amendments, Encumbrances, and Subleases

Any assignments, amendment, encumbrances, or Subleases must be approved by written consent of the Board unless otherwise agreed to in the Lease. The Board may, at its discretion, allow a Tribal Corporation to approve Subleases on its own authority without approval by the Board. Such authority may be delegated at the issuance of the Lease or any time within the life of the Lease. Any restriction or limitation on use must continue to apply under any Sublease or assignment. If the original Lessee was required to submit documentation such as financial records or background checks under the Lease prior to issuance, so too must the Sublessee. No assignment, encumbrance, or Sublease shall relieve the Lessee of their duties under the Lease. On any Business, WEEL or WRS Leases, 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.

105-30-70 Recordings and Documents

The Board and the Designated Authority or a Tribal Corporation will register all Lease Documents with the LTRO. The Board and the Designated Authority or Tribal Corporation where applicable will maintain records of all Leases, Subleases, assignments, amendments, renewals,

modifications, cancellations, and terminations and disseminate to the LTRO and others as necessary.

105-40 LEASE FEES AND DUTIES

105-40-10 Fair Annual Lease Value

Lease and Sublease rates will be determined by the Fair Annual Lease Value, as calculated by the Board, Tribal Corporation, or Designated Authority. If the determination is made by the Designated Authority or Tribal Corporation, it shall report the calculation to the Board within fourteen (14) days. The Fair Annual Lease Value is the most probable dollar amount a property should bring in a competitive, open market reflecting all conditions and restrictions of the specified Lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations.

105-40-20 Rent Review and Adjustment

Leases shall provide for review and adjustment in accordance with this section. The Fair Annual Lease Value requires review of Leases for possible rental rate adjustments on a periodic basis. Rental rate adjustments may be held annually, but no more frequently. Rate adjustment may consider the changing economic circumstances of the Tribe, the Lessee's finances, surrounding properties, the Best Interests of the Tribe, similarly situated properties, as well as any other relevant factors in the determination of rental rates. The Lessee shall receive notice of the review process not later than thirty (30) days prior to its commencement. After a determination is made, the Board, the Designated Authority, or Tribal Corporation shall deliver notice to the Lessee of the rental rate changes, the effective date of said changes, and the process to dispute such changes. No rental rate changes may take effect sooner than ninety (90) days from the delivery date of the notice.

105-40-30 Rental Rate Adjustment Dispute Process

All rental rate adjustment notices shall contain details on this dispute process. Any Lessee who wishes to dispute their rental rate adjustment shall submit in writing their objections to the relevant body contained in the notice no later than five (5) days from the receipt of the notice. If the parties cannot resolve their dispute, the matter will be heard by the Tribal Court. No rental rate adjustment may be invalidated unless it is shown to be arbitrary and capricious. The decision of the Tribal Court shall be final and unappealable.

105-40-40 Performance Bonds

If the Board deems it necessary, a performance bond may be required before issuance of a Lease. The bond may secure the Lessee's obligations, such as Lease payments, development costs, improvement costs, or other performance. For agricultural and business Leases, a performance bond is required unless waived in writing by the Board, Tribal Corporation, or Designated Authority. Such a bond must be in an amount sufficient to secure the annual value of the Lease,

construction of any permanent improvements, any irrigation operation or maintenance costs, and restoration costs. Lessee must give at least sixty (60) days' notice prior to cancellation of the bond.

105-40-50 Insurance Requirements

Agricultural, business, WEEL, and WSR Leases must provide insurance when necessary to protect the interest of the Tribe in an amount sufficient to protect all insurable Permanent Improvements on the premises and must list both the United States and the Tribe as insured parties.

105-50 VIOLATIONS AND ENFORCEMENT

105-50-10 Lease Enforcement and Disputes

Leases issued under this Title shall be under the jurisdiction of the Tribal Court of the Cow Creek Band of Umpqua Tribe of Indians. The Board may contract with State or Federal law enforcement agencies for evictions, trespasses, or enforcement of Lease terms. All the following Violation and Enforcement code sections apply equally to Leases and Subleases. Decisions by the Tribal Court shall be final and unappealable. Lessee may negotiate additional remedies prior to executing a Lease, but may not substitute or avoid remedies contained in this Title.

105-50-20 Trespass Violations

If any person occupies Tribal Trust Land without authorization, the Board, the Designated Authority or the Tribal Corporation may pursue appropriate remedies, including a trespass action to eject the trespasser. Leases will include any process for reporting trespasses upon the Leased property. The Board shall notify Lessees by any reasonable means as soon as practicable of any change in the agency responsible for prosecuting trespasses.

105-50-30 BIA Involvement

The Leases issued under this Title are issued without BIA pre-approval. Notwithstanding this, the BIA may, at its discretion, and upon request from the Tribe, enforce provisions, cancel, terminate, or assist in evictions under this Title.

105-50-40 Termination and Cancellation

Although the BIA, upon notice by the Tribe, has discretionary authority to cancel or terminate the Leases issued under this Title, the Board, Tribal Corporation, or Designated Authority has authority to cancel or terminate any Lease upon default. The Board, Designated Authority, or Tribal Corporation shall notify Lessee of its intent to terminate or cancel the Lease not less than thirty (30) days prior to the effective date of the termination or cancellation. Prior to cancellation or termination, the relevant body will notify the Lessee of the default occurrence and opportunity to cure, if any. Default notice provisions will be contained in every Lease.

105-50-70 Liens and Foreclosure

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Twenty (20) days after any rent is due to the Board, or any Tribal Corporation, a valid Landlord's Lien shall attach to all Lessee's property as described herein. The Landlord's Lien shall attach to all property owned by the party legally responsible for rent which has been brought upon or built upon the Leased land. Such a lien shall be to secure payment for any unpaid rent and fees due. This lien attaches automatically. The Board, Designated Authority, or any Tribal Corporation may secure the encumbered property by any reasonable means, including removal and storage of chattel, locking of any structure, or exclusion of Lessee from the Leased premises. After thirty (30) days, the landlord may foreclose on the property and dispose of it through public sale, noticed to Lessee by certified mail or other reasonable means. The proceeds of the public sale shall be applied to any unpaid rent, late fees, attorney fees, and reasonable storage fees as applicable. Any excess proceeds shall be returned to the Lessee. If the Lessee cannot be located, the funds will remain in a trust account for ninety (90) days, during which the Board, Designated Authority, or Tribal Corporation will continue to make reasonable best efforts to locate Lessee and by notice make them aware of the excess funds. At the end of this ninety-day (90) period, if the Lessee has not been located, the excess funds will be property of the Tribe. Property subject to the lien described herein includes chattel, fixtures, permanent improvements, farm equipment, vehicles, farm animals, crops, structures, and any other saleable goods.

105-50-80 Unlawful Detainer

Any Lessee shall be guilty of an unlawful detainer if: the Lessee holds over after the agreed upon Lease term; the Lessee fails to vacate the Leased property after termination of the Lease by the Lessor and notice of termination to the Lessee; the Lessee fails to pay rent on time after ten (10) days; the Lessee creates an unsafe, unhealthy, or uninhabitable condition upon the Leased property or adjacent properties; the Lessee creates a common nuisance; or the Lessee violates tribal or federal law. Upon finding of any of the preceding, the Lessor will be entitled to evict the Lessee.

105-50-90 Eviction

Once a Lease is cancelled or terminated, by default or by unlawful detainer, the Lessor is entitled to evict the Lessee. To evict, a Lessor must deliver to the Lessee a notice to vacate. The notice must contain: (1) the name and address of the Lessee; (2) reason for eviction; (3) the date and time by which the Lessee must vacate the property; and (4) the name and signature of the Lessor. If the Lessee does not vacate after (3) three days, the Lessor may evict the Lessee by self-help means or by the Tribal Court. The Lessor may file a petition for eviction with the Tribal Court, along with evidence showing cause and notice to Lessee. If the Tribal Court finds the evidence sufficient, it may issue a writ of restitution. The writ of restitution will be delivered by relevant law enforcement officials who shall assist the Lessor in removal of the Lessee. The Tribal Court shall establish reasonable fees for such process.

105-50-100 Abandoned Property

After eviction, termination of Lease, or abandonment of the Leased property by the Lessee, any and all chattel, fixtures, permanent improvements, farm equipment, vehicles, crops, structures, and any other saleable goods left upon the Leased property for twenty (20) days shall be considered abandoned. The Lessor shall take possession of such property and attempt to notify Lessee of the

abandoned property by reasonable means. After seven (7) days, the Lessor shall take possession of the property and may conduct a sale of any salable property by the procedure in Section 105-50-70. Any unsalable goods made be disposed of at the Lessor's discretion, and Lessor may charge Lessee a disposal fee. No waiting periods discussed herein are applicable to abandoned animals, perishable goods, or hazardous materials. Such items must be dealt with as necessary for health and safety.

105-60 ENVIRONMENTAL REVIEW

105-60-10 Environmental Review Authority

The Director of Natural Resources or designated Tribal Environmental Professional or staff shall be responsible for environmental reviews conducted under this Title.

105-60-20 General Provision

Unless exempt, the Board shall not approve or issue a Lease under this Title without compliance with this section. Any Lease issued without compliance with this section will be considered void.

105-60-30 Threshold Determination

The Director shall determine if a Lease is subject to environmental review. A Lease shall be exempted from environmental review if, by its nature, no activity contemplated by the Lease would significantly and demonstrably change or impact the environment or negatively affect the biological and cultural resources of the Tribe. 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 BIA and the Tribe to determine how to proceed and appropriate disposition.

105-60-40 Leases Not Subject to Environmental Review

If the Director determines that the Lease by its nature would not have a Significant Impact on the Environment or negatively affect the biological and cultural resources of the Tribe, the Lease is exempt from the environmental review process. The Lease exemption shall be recorded by the Director and upon the Lease before submission to the LTRO.

105-60-50 Leases Subject to Environmental Review

If the Director determines that the Lease might have a Significant Impact on the Environment, the Lessee must fulfill the requirements of the environmental review process. The physical disturbances must be direct, such land clearing, new building construction, or discharge of emission or effluent associated with the project. If the Director determines that a Lease is subject to the environmental review process, the Lease shall not be finalized until after completion of the review process and approval by the Director.

105-60-60 Environmental Review Process

Unless exempt, before the execution of a Lease under this Title, the Director shall prepare a Tribal Environmental Impact Report. The TEIR shall provide detailed information about the Significant Impacts on the Environment which the planned Lease activity is likely to have, including: (1) a description of the physical environmental conditions in the vicinity of the Lease which will serve as baseline conditions as they exist prior to the Leased activity; (2) all Significant Impacts on the Environment by the proposed Lease activity; (3) whether the significant effects can be avoided if the Lease is executed; (4) whether the significant impacts will be irreversible if the Lease is executed; (5) any mitigating measures suggested or required; and (6) the reasons behind each such determination.

105-60-70 Public Comment Period

Within thirty (30) days following the completion of the TEIR, the Director shall file the report with the Tribe. The Board will cause to be published a Notice of Public Comment along with a draft of the TEIR. The Notice of Public Comment shall be either (1) published in a newspaper of general circulation in the area to be affected by the proposed Lease activity with notice to the public of the opportunity to comment on any significant effects of the proposed Lease activity; (2) posted in the Tribe's offices with notice of public comment of the significant impacts of the proposed Lease activity; (3) posted on the Tribe's website; or (4) any combination of the preceding. The Board, Designated Authority, or Tribal Corporation shall receive public comments for a period no shorter than thirty (30) days. After the end of the comment period, the Board, Designated Authority, or Tribal Corporation shall publish responses in the same manner and place the proposed activity was published. The Board's decision after public comments have been addressed shall be final.

105-60-80 Statutory Compliance

The Director shall also make a determination of other relevant statutes implicated by the Lessee's proposed Lease activity. Such activities or areas of interest include but are not limited to: cultural and historic preservation; floodplain management; wetland protections; endangered species; air quality; water quality; solid waste; farmland protection; noise abatement; or toxic materials. All Lessees must certify their willingness to comply with any relevant statutes.

105-70 MISCELLANEOUS

105-70-10 Governing Law

All rights and liabilities associated with the enactment of this Title shall be construed and enforced according to the laws of the Tribe.

105-70-20 Severability

EXHIBIT A

If any section, or any part thereof, of this Title or the application thereof to any party, person, or entity in any circumstances shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative enactment, the remainder of the relevant section or part of this Title shall not be affected thereby and shall remain in full force and effect as though no section or part thereof has been declared to be invalid.

105-70-30 No Waiver of Sovereign Immunity

Nothing in this Title shall provide or be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its governmental officers, employees and/or agents.

105-60-50 Amendment or Repeal of Code

After this Title becomes effective, this Title shall not be amended or repealed other than by: (1) the passage of a Resolution approved by a vote of 8 members of the Board; and (2) the subsequent approval of any amendment or repeal by the Secretary of the Interior.

105-70-40 Effective Date

This Title shall be effective upon adoption hereof by: (1) a Resolution approved by no less than eight (8) members of the Tribal Board of Directors by roll call vote; and (2) the subsequent approval of the Title by the Secretary of the Interior.