



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

**APPROVAL OF  
SANTA ROSA BAND OF CAHUILLA INDIANS, CALIFORNIA  
LEASING ORDINANCE**

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The attached Leasing Ordinance, submitted by the Santa Rosa Band of Cahuilla Indians (listed in the Federal Register, Vol. 86, No. 18 FR 7557 (January 29, 2021) as the Santa Rosa Band of Cahuilla Indians, California), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 73 pages and adopted by the Santa Rosa Band of Cahuilla Indians Tribal Council on October 8, 2021, is hereby approved.

Dated: **FEB 07 2022**

Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**SANTA ROSA BAND OF  
CAHUILLA INDIANS FIRST  
AMENDED AND  
RESTATED LEASING  
REGULATIONS OF 2021**

**SANTA ROSA BAND OF CAHUILLA INDIANS**  
**FIRST AMENDED AND RESTATED LEASING REGULATIONS OF 2021**

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

### **FIRST AMENDED AND RESTATED LEASING REGULATIONS OF 2021**

#### **INTRODUCTION**

The lands of the Santa Rosa Indian Reservation in Riverside County, California are located within the jurisdiction of the Santa Rosa Band of Cahuilla Indians based upon the Tribe's inherent sovereignty and Article III of the Governing Document of the Santa Rosa Band of Cahuilla Indians.

The Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (known as the HEARTH Act of 2012), Act July 30, 2012, P. L. 112-151, § 1, 126 Stat. 1150, amending federal law pertaining to leasing on restricted Indian lands as set forth at 25 U.S.C. Section 415(h) authorizes federally-recognized Indian tribes to adopt tribal leasing regulations, subject to Secretarial approval, to enable tribes with approved tribal leasing regulations to enter certain surface Leases of Tribal land without additional Secretarial approval requirements.

Thereafter, the Tribe adopted and, on November 10, 2013, the Secretary through the Acting Secretary—Indian Affairs approved the Santa Rosa Band of Cahuilla Indians Business Site Leasing Regulations of 2013. The 2013 Regulations provide for tribal approval authority under the HEARTH Act for Business Leases, including leases for single-family residential developments and multi-family residential developments as well as for Wind and Solar Resource Leases, Wind Energy Evaluation Leases, and Leases for public, religious, educational, recreational, and cultural purposes.

The Tribe adopts these 2021 Regulations both to retain tribal regulatory leasing approval authority for business (including single-family residential developments and multi-family residential developments), WSR, WEELs, public, religious, educational, recreational, and cultural purposes, and to make modifications to both update the tribal leasing regulations and to expand tribal leasing authority under the HEARTH Act to include agricultural and residential leasing. Upon receiving Secretarial approval, these Santa Rosa Band of Cahuilla Indians First Amended and Restated Leasing Regulations of 2021 will replace the Santa Rosa Band of Cahuilla Indians Business Site Leasing Regulations of 2013.

#### **CHAPTER 100. GENERAL PROVISIONS**

101. **Title**. These Regulations shall be referred to as the Santa Rosa Band of Cahuilla Indians First Amended and Restated Leasing Regulations of 2021.

102. **Authority**. These Regulations have been developed, approved, and promulgated under the authority of federal legislation, namely the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012, 25 U.S.C. § 415(h) (the "HEARTH Act of 2012"). Further, the Tribe has authority to adopt these Regulations as a federally

recognized Indian tribe, as a matter of its inherent sovereignty, and by authority of the Governing Document of the Santa Rosa Band of Cahuilla Indians. These Regulations are an amended and restated version of the 2013 Regulations previously approved by BIA. Section 404 of the 2013 Regulations authorized modifications to the 2013 Regulations with BIA approval for major substantive changes.

103. **Effective Date.** These Regulations are effective as of the date these Regulations are approved by the Secretary.

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

- (a) Recognize the authority of the Santa Rosa Band of Cahuilla Indians to enter, issue, and approve surface Leases for agricultural, business, public, religious, educational, recreational, cultural, residential, wind energy evaluation, and wind and solar resource purposes, streamline the leasing process, and set forth details on management and enforcement of Leases on Tribal land held in trust for the benefit of the Tribe or held in restricted status.
- (b) Implement the HEARTH Act of 2012 for leasing purposes on the Tribal land of the Santa Rosa Band of Cahuilla Indians.

105. **Definitions.** For purposes of these Regulations, the following words and phrases shall have the meanings set forth in this section:

- (a) **Action** for purposes of Chapter 400 and within the definition of Significant Effect on the Environment means an activity which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.
- (b) **Agricultural land** means Tribal land suited or used for the production of crops, livestock, or other agricultural products, or Tribal land suited or used for a business that supports the surrounding agricultural community.
- (c) **Agricultural Lease** means a Lease of Agricultural land for farming or grazing.
- (d) **Allotted Land** means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.
- (e) **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.
- (f) **Best Interest of the Tribe or Best Interest** means the balancing of interests including but not limited to attaining the highest economic

income, providing incentives to increase economic development, preserving and enhancing the value of Tribal Trust land, increasing employment and jobs on Tribal Trust land, and preserving the sovereignty of the Tribe. In the context of Residential Leases, the Best Interest of the Tribe or Best Interest, at the determination of the Tribal Council, may be served by Tribal land being utilized to provide housing for a Tribal member or Tribal member family.

- (g) **BIA** means the Secretary of the Interior or the Bureau of Indian Affairs within the United States Department of the Interior.
- (h) **Business Site Lease or Business Lease** means a Lease of Tribal land for a business purpose that falls within the scope of Leases specified in these Regulations.
- (i) **Categorical Exclusion** means a category of actions which do not individually or cumulatively have a Significant Effect on the Environment and which have been found to have no such effect and for which, therefore, an Environmental Assessment is not required.
- (j) **Environmental Assessment** means a concise public document disclosing and analyzing the environmental consequences of a proposed action, the "no action" alternative, and a reasonable range of alternatives so that the Tribe has sufficient evidence and analysis for determining whether or not to withhold approval of the proposed Lease or require substantive changes in the Lease and the proposed operations or facilities therein. The document shall include brief discussions of the need for the proposed action and a listing of agencies and persons consulted.
- (k) **Fair annual rental** means the amount of rental income that a leased tract of Tribal land would most probably command in an open and competitive market.
- (l) **Holdover or Holding over** means circumstances in which a Lessee remains in possession of the leased premises after the Lease term expires.
- (m) **Housing for public purposes** means multi-family developments, single-family residential developments, and single-family residences, which are administered by the Tribe or a tribally designated housing authority (TDHE).
- (n) **Lease** means a written agreement or contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Tribal land, for a specified purpose and duration. The Lessee's right to possess will limit the

Tribe's right to possess the leased premises only to the extent provided in the lease.

- (o) **Lease Amendment** means an agreed-upon modification, revision, or amendment of a Lease.
- (p) **Lease document** means a Lease Amendment, a Lease Assignment, a Lease renewal, a Sublease, a Leasehold Mortgage, or similar document; and, depending on the context, includes a Lease
- (q) **Leasehold Mortgage or 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.
- (r) **Lessee** means a person or entity who has acquired a legal right of possession to Tribal land by a Lease under these Regulations. A Lessee is the same as Tenant.
- (s) **Lessor** means the Tribe granting a Lease providing a Lessee with a legal right of possession to Tribal land.
- (t) **LTRO** means the Land Titles and Records Office of the BIA.
- (u) **Mitigation of an impact** means one of the following:
  - (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
  - (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - (5) Compensating for the impact by replacing or providing substitute resources or environments.
- (v) **Mortgagee** means the holder of a Leasehold Mortgage.
- (w) **Nominal rental or nominal compensation** means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

- (x) **Notice of Violation** means a letter notifying the Lessee of a Violation of the Lease and providing the Lessee with a specified period of time to show cause why the Lease should not be cancelled for the Violation.
- (y) **Performance bond** means security for the performance of certain lease obligations, as furnished by the Lessee, or a guaranty of such performance as furnished by a third-party Surety.
- (z) **Permanent improvements** means buildings, other structures, and associated infrastructure attached to the leased premises.
- (aa) **Public**, for purposes of the Environmental Review Process set out in Chapter 400, means any person or entity with the reasonable potential to be significantly affected by the Lease or the Lease activities.
- (bb) **Regulations or 2021 Regulations** means these First Amended and Restated Leasing Regulations of 2021. (**2013 Regulations** means the Santa Rosa Band of Cahuilla Indians Business Site Leasing Regulations of 2013.)
- (cc) **Reservation or Santa Rosa Indian Reservation** means all those lands within the exterior boundaries of the Santa Rosa Indian Reservation located in Riverside County, California as well as any other lands held in trust by the United States for the beneficial interest of the Tribe.
- (dd) **Residential Lease** means a Lease of undeveloped land or developed land (together with the improvements thereon) on Tribal land for single-family residences and Housing for public purposes; notwithstanding, the term "Residential Lease" as used in these Regulations does not apply to Leases for single-family residential developments or multi-family residential developments, which are considered included within the category of Business Leases.
- (ee) **Restricted land or restricted status** means land the title to which is held by the Tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary (unless such approval authority is otherwise delegated by federal law) because of limitations contained in the conveyance instrument pursuant to federal law.
- (ff) **Secretary** means the Secretary of the Interior or an authorized representative.

- (gg) **Significant Effect on the Environment** means a substantially severe adverse impact or effect. The following should be considered in evaluating the severity or intensity of an impact:
- (1) Whether an impact is beneficial or adverse.
  - (2) The degree to which the proposed Action affects public health and safety.
  - (3) Unique characteristics of the geographical area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
  - (4) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
  - (5) The degree to which the Action may establish a precedent for future Actions with significant effects or represents a decision in principle about a future consideration.
  - (6) Whether the Action is related to other Actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an Action temporary or by breaking it down into small component parts.
  - (7) The degree to which the Action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources.
  - (8) The degree to which the Action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
  - (9) Whether the Action threatens a violation of federal or Tribal law or requirements imposed for the protection of the environment.
- (hh) **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 the Lease.
- (ii) **Surety** means one who guarantees the performance of another.

- (jj) **Tenant** means a person or entity who has acquired a legal right of possession to Tribal land by a Lease under these Regulations. A Tenant is the same as a Lessee.
- (kk) **Termination or Cancellation** means action to end a Lease.
- (ll) **Trespass** means any unauthorized occupancy, use, or action on Tribal land.
- (mm) **Tribal authorization** means a duly adopted tribal authorization, tribal resolution, or other appropriate tribal document authorizing the specified action.
- (nn) **Tribal Council** means the Tribal Council of the Santa Rosa Band of Cahuilla Indians as set forth in its Governing Document.
- (oo) **Tribal General Council** means the General Council of the Tribe comprised of all members of the Tribe who are at least 18 years of age as set forth in the Tribe's Governing Document.
- (pp) **Tribal land** means any tract in which the surface estate is owned by the United States in trust for the Santa Rosa Band of Cahuilla Indians, and land that is owned by the Tribe subject to federal restrictions against alienation or encumbrance, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands 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. § 5124).
- (qq) **Tribal land assignment** means a contract or agreement that conveys to Tribal members or wholly owned tribal corporations any rights for the use of Tribal lands, assigned by the Tribe in accordance with Tribal laws or customs.
- (rr) **Tribal law** means the body of non-federal law that governs land and activities under the jurisdiction of the Tribe, including the Tribe's Governing Document, any ordinances and other enactments by the Tribe, Tribal court rulings, and Tribal common law.
- (ss) **Tribal member** means a member of the Tribe.
- (tt) **Tribe** means the Santa Rosa Band of Cahuilla Indians.
- (uu) **Trust land** means any tract held in trust status.



- (vv) **Trust status** means that the United States holds title to the tract in trust for the benefit of the Tribe.
- (ww) **Violation** means a failure to take an action, including payment of compensation, when required by the Lease, or to otherwise not comply with a term of the Lease. This definition applies for purposes of the Tribe's enforcement of a Lease under these Regulations no matter how "violation" or "default" is defined in the Lease.
- (xx) **Wind energy evaluation leases (WEELs)** mean short-term Leases that authorize possession of Tribal land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.
- (yy) **Wind and solar resource (WSR) leases** mean Leases that authorize possession of Tribal land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind or solar energy to generate and supply electricity.

106. **Scope of Leases Covered in the Regulations.**

- (a) These Regulations cover Leases that authorize the possession of Tribal land for agricultural, business, public, religious, educational, recreational, cultural, residential, wind energy evaluation, and wind and solar resource purposes, except for the Leases and other instruments expressly excluded under Section 107 hereof. Under these Regulations, leasing for single-family residential developments and multi-family residential developments fall under the category of Business Leases, and all other residential leasing falls under the category of Residential Leases.
- (b) These Regulations allow for Mortgages of leasehold interests on Tribal land but not Mortgages of Tribal land.

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

- (a) **Mineral Resources Leases.** These Regulations shall not authorize or apply to leases for the exploration, development, or extraction of any mineral resources.
- (b) **No Leases of Individually Owned Indian Allotted Land.** These Regulations shall not apply to any lease of individually owned land, including Indian Allotted Land.

- (c) **BIA Approved Leases.** These Regulations shall not apply to any leases which were processed with and approved by the BIA pursuant to 25 C.F.R. Part 162.
- (d) **No Leases of Unrestricted Fee Land.** These Regulations shall not apply to leases of unrestricted fee land, including such land owned in fee by the Tribe.
- (e) **Grazing Permits.** These Regulations shall not apply to grazing permits, which will continue to be covered by 25 CFR Part 166.
- (f) **Timber Contracts.** These Regulations shall not apply to timber contracts, which will continue to be covered by 25 CFR Part 163.
- (g) **Management Contracts or Joint Venture Agreements.** These Regulations shall not apply to management contracts, joint venture agreements, or other encumbrances of Tribal land, which will continue to be covered by 25 U.S.C. Section 81.
- (h) **Easements or Rights-of-Way.** These Regulations shall not apply to easements or rights-of-way, which will continue to be covered by 25 CFR Part 169.
- (i) **Permits.** These Regulations do not apply to permits and similar instruments authorizing temporary uses of Tribal land in accordance with Tribal laws or custom; and (2) trader's licenses.
- (j) **Tribal Land Assignments.** The Regulations do not apply to Tribal land assignments. These Regulations also do not apply to land that is fractionated or undivided interests in land owned by the Tribe and individual Indians.

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

- (a) **Federal Laws.** Leases granted or approved under these Regulations will be subject to applicable federal laws of general applicability and any specific federal statutory requirements that are not incorporated in these Regulations.
- (b) **Tribal Laws.** Leases granted or approved under these Regulations will be subject to Tribal laws, except to the extent that Tribal law is inconsistent with applicable federal law.

109. **Tribe Executing and Approving Leases under these Regulations.** A person interested in entering a Lease with the Tribe should contact the Tribal Administrator or the Tribal Council. The Tribal Council shall decide whether to enter a Lease and

negotiate Lease terms. The Tribal Council may delegate Lease review, including for environmental compliance, to tribal staff or tribal departments. The execution of a Lease by the Tribal Chairperson or other authorized tribal officer, with Tribal Council approval, serves for purposes of the Tribe entering the Lease as the Lessor and approving the Lease under these Regulations. Notwithstanding any other provision herein, nothing within these Regulations requires the Tribe to enter a Lease, which decision is at the discretion of the Tribe. A Lease Amendment, Assignment, renewal, Sublease, and Leasehold Mortgage are governed by the terms of the applicable Lease; where tribal action is required under the Lease or under these Regulations, such action shall be made by the Tribal Council, unless otherwise specified in the Lease or by Tribal law, and subsequent execution of the Lease document by the Tribal Chairperson or other authorized tribal officer serves for purposes of the Lease document being approved by the Tribe, or entered and approved by the Tribe, as applicable.

**110. Sovereign Immunity; No Tribal Liability nor Duty to Maintain or to Provide Services.**

- (a) All inherent rights of the Tribe as a federally recognized Indian tribe are hereby expressly reserved. These Regulations do not constitute a waiver of the sovereign immunity of the Tribe or of its officials, employees, attorneys, and agents, and the Tribe reserves all rights for itself and its officials, employees, attorneys, and agents not expressly waived by these Regulations. A Lease and any other Leasing document entered under these Regulations shall not be construed to waive the sovereign immunity of the Tribe, nor of its officials, employees, attorneys, and agents, by adoption or incorporation of law or any other leasing provision, unless, and only to the limited extent, expressly stated in the document.
- (b) Unless otherwise expressly agreed to in writing, and then only to the limited extent expressly provided, the Tribe shall have no liability in relation to use or occupancy of Tribal land under a Lease, including for any loss, damage, or injury of any kind whatsoever to the person or property of Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on the leased premises or from any other cause whatsoever. Tribal officials, employees, attorneys, and agents shall have no liability in relation to use or occupancy of Tribal land under a Lease, including for any loss, damage, or injury of any kind whatsoever to the person or property of Lessee or sublessees or any other person whomsoever, caused by any use of the leased premises, or by any defect in any structure erected thereon, or arising from any accident, fire, or other casualty on the leased premises or from any other cause whatsoever.
- (c) Except to the extent that such obligation is expressly assumed in writing by the Tribe, the Tribe shall have no duty to maintain or repair, and no duty

to provide any services or utilities for or to, leased premises or any improvements thereon.

111. **Severability; Construction; No Entitlement.** If any provision of these Regulations or the application thereof to any person or circumstance is held invalid, the remainder shall not be affected and shall remain in full force and effect, provided the original intent remains. Herein, unless the context clearly requires otherwise, plural words include the singular and singular words include the plural, the masculine, feminine, and neuter genders are each deemed to include the others, the words "shall" "will" "must" or "agrees" are mandatory, the words "may" or "should" are permissive, the word "or" is not exclusive, the words "includes" or "including" are not limiting, and defined terms may or may not be capitalized herein. These Regulations, including any ambiguities herein, shall be interpreted and construed strictly and narrowly in favor of the Tribe. The section headings, and other headings, contained in these Regulations are for reference purposes only and shall not affect the meaning or interpretation of these Regulations. Nothing in these Regulations may be interpreted or construed to grant or permit any jurisdiction to the State of California not otherwise granted or permitted by applicable law. These Regulations establish a process for leasing Tribal land and do not create an entitlement to a Lease or otherwise.

112. **Repeal of 2013 Regulations; Applicable Law.**

- (a) Effective upon the date of approval of these 2021 Regulations by the Secretary through the BIA, these 2021 Regulations shall supersede and replace the 2013 Regulations as applied prospectively.
- (b) Except as otherwise provided in this section, these Regulations supersede, replace, and repeal all conflicting provisions of any and all prior rules, regulations, policies, and procedures of the Tribe; if the provisions of these Regulations conflict with the provisions of any other rule, regulation, policy, or procedure, the provisions of these Regulations shall control.
- (c) To promote Tribal member participation in federally sponsored loan programs for financing of residential homes, in the event of a conflict between these Regulations and any tribal law, code, ordinance, rule, policy, or procedure adopted to provide for the participation of Tribal members in one or more of the federally sponsored loan programs for financing of residential homes, including programs offered through the U.S. Department of Housing and Urban Development, the Tribal law, code, ordinance, rule, policy, or procedure adopted in relation to a federally sponsored loan program shall control to the extent of such conflict, provided it is consistent with the HEARTH Act.

**CHAPTER 200. ADMINISTRATION AND ENFORCEMENT**

201. **Tribe's Responsibilities in Administering and Enforcing Leases.** The Tribe will attempt to make sure that Lessees meet their payment obligations under the Leases through collection of rent and the prompt initiation of collection and enforcement actions and in the exercise of any negotiated remedies that apply in addition to specific remedies made available to the Tribe under these Regulations. The Tribe will also attempt to make sure that Lessees comply with the operating requirements in their Leases, through appropriate inspections and enforcement actions as needed to protect the interests of the Tribe and of Indians holding Tribal Land assignments near the leased premises. The Tribe may take immediate action to recover possession of Tribal land from trespassers operating thereon without a Lease and take other emergency action as needed to preserve the value of the land. A Lease of Tribal land may provide either or both parties with negotiated remedies in the event of a Violation, including the power to terminate or cancel the Lease. A Lease shall provide for all Lease payments to be made directly to the Tribe.

202. **Records: Ownership and Preservation.** The Tribe will preserve the records made and received in the course of conducting business under these Regulations as required by applicable law or policy and, in any event, for a reasonable period of time in order to be able to adequately document essential transactions and to furnish information necessary to protect its legal and financial rights or those of persons directly affected by activities hereunder.

203. **Administrative Fees.** Unless waived or reduced by the Tribal Council, the Tribe will charge an administrative fee each time it reviews or approves a Lease, a Lease Amendment, an Assignment of a Lease, a Sublease, a Mortgage or similar encumbrance, environmental review document, or a lease-related document, such as an encumbrance instrument. These fees will be paid by the Lessee, assignee, or sublessee to cover the Tribe's costs in preparing or processing the documents and administering the Lease, including its attorney fees.

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

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

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

- (a) A Lessee's failure to pay rent in the time and manner required by a Lease will be a Violation of the Lease, and a Notice of Violation will be issued. If the Lease requires that rent payments be made to the Tribe, in the event of a failure to pay rent as required under a Lease, the Tribe will send the Lessee and its sureties, including any approved Leasehold Mortgagee, a Notice of Violation by certified mail, return receipt requested. Any failure or delay in sending the Notice of Violation does not excuse a failure to pay rent in the time and manner as required under a Lease.
- (b) If a Notice of Violation has been issued by the Tribe to a Lessee and if the Lessee fails to provide proof of payment or cure the Violation within ten (10) business days of the notice, and the amount due is not in dispute, the Tribe may take immediate action to recover the amount of the unpaid rent and any associated interest charges or late payment penalties. The Tribe may also cancel the Lease or invoke any other remedies available under the Lease or applicable law, including collection on any available bond. An action to recover any unpaid amounts will not be conditioned on the prior Cancellation of the Lease or any further notice to the Lessee, nor will such an action be precluded by a prior Cancellation.
- (c) Partial payments and underpayments of rent may be accepted by the Tribe, but acceptance will not operate as a waiver with respect to any amounts remaining unpaid or any other existing Lease Violations.
- (d) Unless otherwise provided in the Lease, overpayments may be credited as an advance against future rent payments or refunded.
- (e) If a personal or business check for rent is dishonored by the financial institution on which the check was drawn, and a rent payment is therefore not made by the due date, the failure to make the payment in a timely manner will be a Violation of the Lease, and a Notice of Violation will be issued. If such occurs, the Tribe may require that any payment made to cure such a Violation, and any future payments by the same Lessee, must be made by an alternative payment method or source approved by the Tribe.

207. **Investigations to Determine Lessee Compliance.**

- (a) Unless a Lease provides otherwise, the Tribe may enter the leased premises at any reasonable time, without prior notice, to protect the interests of the Tribe and of Indians holding Tribal land assignments nearby the leased premises and to ensure that the Lessee is in compliance with the operating requirements of the Lease.

- (b) If an Indian holding a Tribal land assignment or other interest in land nearby the leased premises notifies the Tribe that a specific Lease Violation has occurred, the Tribe will investigate.

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

- (a) If the Tribe determines that a Lease has been violated, the Tribe will send the Lessee and its sureties, including any approved Leasehold Mortgagee, a Notice of Violation by certified mail, return receipt requested. The Notice of Violation must be provided by certified mail, return receipt requested.
- (b) Within ten (10) business days of the notice, the Lessee must:
  - (1) Cure the Violation and notify the Tribe in writing that the Violation has been cured;
  - (2) Dispute the Tribe's determination that a Violation has occurred or explain why the Tribe should not cancel the Lease; or
  - (3) Request additional time to cure the Violation.

209. **Remedies for Lease Violations.**

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

the Lessee by certified mail, return receipt requested. The cancellation letter will:

- (1) Explain the grounds for Cancellation;
  - (2) Notify the Lessee of the amount of any unpaid rent, interest charges, or late payment penalties due under the Lease; and,
  - (3) State the effective date of the Cancellation and order the Lessee to vacate the property within a set number of days (typically 30, 60, or 90 days or a shorter number of days if the Tribe finds exigent circumstances exist) from the date of receipt of the cancellation letter.
- (d) In the absence of applicable tribal or federal law, state law may apply to Lease disputes or define the remedies available to the Tribe in the event of a Lease Violation on the condition that state law may only apply if the Lease expressly provides that state law may apply in the absence of applicable tribal or federal law.

210. **No Holding Over After Expiration or Cancellation of a Lease; Trespass.** If Lessee remains in possession of the leased premises after the expiration or Cancellation of a Lease, the Tribe will treat the unauthorized use as a Trespass, namely an unauthorized presence on or continued possession of the land after cessation of a legal right to such presence or possession, including any failure to remove from the land anything which the Lessee was under a duty to remove after the Lessee's legal right to remain on the land ceases. The Tribe will take action to recover possession of the leased premises and pursue any additional remedies available under applicable law, which may include pursuing an appropriate judicial action.

211. **Abandonment of the Leased Premises.** If a Lessee abandons the leased premises under a Lease, the abandonment is a Violation of the Lease. A Lease may specify a period of non-use after which the leased premises will be considered abandoned.

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

213. **Appeals.** A final decision or determination made on behalf of the Tribe under these Regulations, or an alleged violation of these Regulations, may be appealed by a proposed Lessee or by a person or entity with a definable interest that reasonably may be directly affected by the proposed Lease or its underlying action. Any such appeal shall be made to the Tribal Council in writing, specifying the specific decision, determination, or alleged violation subject to the appeal, and, if applicable, providing a



copy of relevant documentation or a reference to relevant documentation. The written appeal shall be made to the Tribal Council within 15 days of the final decision or determination being appealed, or the occurrence of the alleged violation of these Regulations; in its discretion, the Tribal Council may grant an extension to the time-period for filing a written appeal, but in no case shall the extension be for more than 30 additional days. Upon the filing of a written appeal, the Tribal Administrator or other tribal staff with responsibility over management of leasing activity on Tribal land will promptly provide a written report to the Tribal Council on the proposed Lease and the appeal, with a copy to the appellant, explaining the grounds for the Tribe's decision or determination or action relating to the proposed Lease and addressing the grounds raised in the written appeal. The Tribal Council will address the appeal in a regular or special meeting, with advance written notice provided to the appellant and the appellant being given an opportunity to address the Tribal Council and present evidence. The Tribal Council will then issue a written decision on the appeal within a reasonable time. The Tribal Council decision is final.

#### **CHAPTER 300. COORDINATION WITH AND OVERSIGHT BY THE BIA**

301. **Documentation.** Whenever the Tribe executes a Lease pursuant to these Regulations, the Tribe shall provide the Secretary (through the BIA office having jurisdiction) with: (1) a copy of the Lease, including any amendments to or renewals of the Lease; and (2) in the case of tribal regulations or a Lease that allows for Lease payments to be made directly to the Tribe, documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States as described herein. Also, the Tribe's delivery to the BIA (through the BIA office having jurisdiction) of Lease documentation, including executed Leases, Lease Amendments, lease renewals, Subleases (except residential Subleases), Lease Assignments, and Leasehold Mortgages, is required so that the BIA can record such Lease documents in the LTRO.

302. **Trust Responsibility.**

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

303. **Compliance.**

- (a) **In General.** An interested party, after exhausting all applicable tribal remedies, may submit a petition to the Secretary, at such time and in such

form as the Secretary determines to be appropriate, to review the compliance of the Tribe with these Regulations approved by the Secretary.

- (b) **Violations.** If, after carrying out a review under this section, the Secretary determines that the Regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of Leases of Tribal Trust lands.
- (c) **Documentation.** If the Secretary determines that a violation of the Regulations has occurred and a remedy is necessary, the Secretary, at his/her discretion, may:
  - (1) make a written determination with respect to the Regulations that have been violated;
  - (2) provide the Tribe with a written notice of the alleged violation together with such written determination; and
  - (3) prior to the exercise of any remedy, the rescission of the approval of the Regulation involved, or the resumption of Lease approval responsibilities, provide the Tribe with (a) a hearing that is on the record and (b) a reasonable opportunity to cure the alleged violation.

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

#### **CHAPTER 400. ENVIRONMENTAL REVIEW PROCESS**

401. **Tribal Environmental Review Process.** The Tribal Council shall oversee environmental review under these Regulations, and the Tribal Council may delegate environmental review to tribal staff or departments. The Tribal Council, or tribal staff or departments in the event of delegation by the Tribal Council, may require that reports or other environmental analysis and documentation be prepared and may require that the costs and expenses of the environmental review and analysis be borne by the Lessee/proposed Lessee.

402. **Identification and Evaluation of Significant Environmental Effects of a Proposed Action.** As part of its review of a proposed Lease, the Tribe shall conduct an evaluation of potential environmental effects or impacts on the environment of any Action related to a proposed Lease, using its own staff or, if necessary for major Actions, environmental consultants, and may require the Lessee/proposed Lessee to

pay for the costs and expenses of this review. The Tribe shall conduct an evaluation of the significance of all identified potential environmental effects of the proposed Action, utilizing the standards of significance set forth herein and taking the following steps in the identification and evaluation of the potential Significant Effect on the Environment of a proposed Action:

- (a) **Identify any Action related to a proposed Lease which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.** A proposed Lessee must disclose to the Tribe, and the Tribe will check and confirm:
  - (1) If the proposed Lease will involve any grading, excavations, installation of structural improvements, modification of existing improvements, or other construction work;
  - (2) What operations and activities are planned for the leased premises; and
  - (3) If the proposed leased premises are located at or near an environmentally sensitive area or natural resource.

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

- (b) **Identify which elements of the environment may be affected by the anticipated Action.** The Tribe will use the following checklist to identify which elements of the environment will need to be evaluated if they may be affected by the anticipated Lease-related Action:
  - (1) Any adverse effects to air quality, minerals, and land;
  - (2) Any adverse effects to water resources (surface and ground water, water quality, water quantity, water uses and rights);
  - (3) Any adverse effects to floodplains or wetlands;
  - (4) Any adverse effects to biological resources (wildlife, vegetation, ecosystems and biological communities);
  - (5) Any adverse effects to cultural, archeological, and historic resources;
  - (6) Any adverse effects on agriculture, hunting, fishing, gathering, timber harvesting, mining, or recreational uses of land;

- (7) Whether the proposed Action would jeopardize threatened or endangered species;
- (8) Any adverse effects on visual resources, scenic views, and wilderness values;
- (9) Any generation of excessive noise, vibrations, light, or glare;
- (10) Any adverse effects on transportation networks;
- (11) Any adverse traffic impacts;
- (12) Any adverse effects on public health and safety;
- (13) Any adverse effects on the economic and social conditions of the tribal community; or
- (14) Any adverse effects upon minority and low-income populations as defined in Executive Order 12898 (Environmental Justice).

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

- (c) **Determine if the proposed Action is categorically excluded from further environmental review.** In general, subject to the exceptions listed below, the following Actions or Activities shall be categorically excluded from any requirement to prepare an Environmental Assessment in connection with the environmental review of an Action related to a Lease processed under these Regulations:

- (1) **Existing Facilities:** The operation, repair, maintenance, replacement, transfer, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of entering into the Lease.
- (2) **Replacement or Reconstruction:** Replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same size, purpose, and capacity as the structure replaced, including, without limitation, replacement or reconstruction

of existing utility systems or facilities involving negligible or no expansion of capacity and conversion of overhead electrical utility distribution system facilities to underground facilities.

- (3) **New Construction of Small Structures:** Construction of a limited number of new, small facilities or structures not exceeding 1,000 square feet in total; installation of small new equipment and facilities in small structures; and the construction or placement of minor accessory (appurtenant) structures including but not limited to small above-ground utility facilities shelters, on-premises signs, and fences.
- (4) **Minor Alterations to Land:** Minor alterations in the condition of land or vegetation in an area not exceeding one (1) acre, which do not involve removal of healthy, mature, or scenic trees.
- (5) **Minor Additions to Existing Structures:** Minor additions to existing buildings or other structures relating to residential or other low impact leasing activities where the addition does not increase the original size by more than 25 percent.
- (6) **Hazardous Waste Cleanup Actions:** Cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance as consistent with applicable federal law.
- (7) **No Planned Change in Land Use; Emergency Repairs; Other:** Existing land use will continue with no planned change in land use; emergency repairs; data gathering activities such as inventories, geological, geophysical, archeological, paleontological and cadastral surveys; and establishment of non-disturbance environmental quality monitoring programs and field monitoring stations including testing services.
- (8) **Exceptions to Categorical Exclusions:** The above-listed Categorical Exclusions may be inapplicable when any of the following circumstances exist:
  - (a) **Location.** An Action that is ordinarily insignificant and falls within a category that ordinarily would qualify for a Categorical Exclusion may be significant in a particularly sensitive environment.
  - (b) **Cumulative Impact.** When the cumulative impact of successive Actions of the same type in the same place over time is significant.

- (c) **Unusual Circumstances.** Where there is a reasonable possibility that the Action will have a Significant Effect on the Environment due to unusual circumstances.
- (d) **Hazardous Waste Sites.** When the Action is located on a site which is officially designated as a hazardous waste site on a list compiled pursuant to applicable state or federal regulations.
- (e) **Historical or Cultural Resources.** When the Action may cause a substantial adverse change in, or significant effect to, an historical or cultural resource.

If the Action properly falls within a Categorical Exclusion, the Categorical Exclusion shall be identified and an explanation of why the Action fits within it shall be included in the written report documenting the environmental review of the Action related to the proposed Lease.

- (d) **Evaluation of Whether Any Identified Effects on the Environment are Significant.** For each potential environmental impact or effect of the Action involved in the proposed Lease that has been identified and that does not properly fall within a Categorical Exclusion, the Tribe shall determine whether or not the impact or effect is adverse or beneficial, and if adverse, whether the degree of adversity reaches a level that is reasonably seen as resulting in a substantially severe adverse change in the environment (i.e., a Significant Effect on the Environment). In making these determinations, the Tribe shall exercise good common sense and also utilize the standards of significance set forth herein. Written statements explaining the Tribe's determinations on whether any identified effects on the environment are significant will be included in the written report documenting the environmental review of the Action related to the proposed Lease.

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

404. **Public Information and Comments.** When the Tribe is contemplating an approval of a proposed Lease under these Regulations, the Tribe shall insure that the Public is informed of, and has a reasonable opportunity to comment on, any Significant Effect on the Environment of the proposed Action identified by the Tribe. The Tribe shall give reasonable notice to the Public of any Significant Effect on the Environment of any Action related to a proposed Lease by posting of written notices thereof at locations selected by the Tribe where interested members of the Public will see the notices including at the Tribal Offices and on the Tribe's publicly accessible website. The Tribe may publish a written notice of a proposed Action in a newspaper of general circulation available to persons in the vicinity of the proposed premises, give written notice by mail to persons in the vicinity of the proposed premises, schedule a public hearing on the proposed Action, and make other arrangements to notify the Public, such as by email to available email addresses or by social media. The Public shall have fifteen (15) days to provide comments unless the Tribe determines under the circumstances to provide a longer period of time. All public comments on the proposed Action shall be copied, recorded, or otherwise documented and preserved.

405. **Tribal Responses to Public Comments.** Prior to any approval of a proposed Lease under these Regulations, the Tribe shall provide written responses to all relevant and substantive public comments on any Significant Effect on the Environment of the proposed Action. The Tribe shall have the option to provide collective responses to public comments of similar content on specific Significant Effect on the Environment impacts of the proposed Action. The environmental review, public comments, and the Tribe's responses will be documented in a memo, report, or other similar document available at the Tribal Offices and posted on the Tribe's publicly accessible website.

406. **Tribal Decisions on Proposed Leases to Incorporate Environmental Factors.** In making any decision whether to approve or withhold approval from a proposed Lease, after reviewing all public comments and responses and the recommendations from its own staff and any consultants involved in the Lease review process, the Tribe shall make a threshold determination whether or not the proposed Action involves any Significant Effect on the Environment, and, if so, thereafter shall determine whether or not the identified environmental impacts can be mitigated to a level of non-significance by the imposition of reasonable mitigating measures as conditions of approval or by requiring changes to the proposed Action. Then, after review of any environmental review documentation or information required by the Tribe, the Tribe shall make a determination whether or not to withhold approval of the proposed Lease or require substantive changes in the Lease and proposed operations or facilities therein. The review and related decision making will be completed within a reasonable time given the context of the proposed Lease and scope of the environmental review.

**CHAPTER 500. BUSINESS LEASE REQUIREMENTS—COVERING LEASING FOR BUSINESS (INCLUDING SINGLE FAMILY RESIDENTIAL DEVELOPMENTS AND MULTI-FAMILY RESIDENTIAL DEVELOPMENTS), PUBLIC, RELIGIOUS, EDUCATIONAL, RECREATIONAL AND CULTURAL PURPOSES)**

501. **Process for Obtaining a Lease.**

- (a) **Lease Application Form.** A potential Lessee interested in obtaining a Lease for a site on Tribal land shall either submit a written proposal to the Tribe or, at the request of the Tribe, fill out a Lease application form provided by the Tribe which will ask for basic information about the proposed uses and activities of the Lessee, the improvements and facilities proposed to be constructed or installed at the site, and about the potential Lessee.
- (b) **Determination of the Precise Location and Dimensions of the Leased Premises.** A potential Lessee may propose the area or space on the Reservation that it desires for the leased premises, and the Tribe will determine its availability and suitability for the proposed use. If appropriate, the Tribe may indicate that another location on the Reservation is more suitable for the proposed leased premises. Once the general location of the proposed lease premises is determined, its precise dimensions must then be determined in order to meet the requirement for a proper description of the leased premises as required herein.
- (c) **Plans and Specifications of Proposed Improvements and Facilities.** In order to finalize a Lease, the proposed Lessee must deliver to the Tribe for review and approval preliminary plans of any improvements to be constructed and specifications of any equipment to be installed at the site.
- (d) **Construction Schedules.** Prior to execution of the Lease, the proposed Lessee shall prepare and present to the Tribe for review and approval tentative construction schedules for Permanent improvements planned for the leased premises that include dates for commencement and completion of construction. The construction schedules may provide sets of dates for phased construction of improvements.
- (e) **Information and Documentation Required for Environmental Review.** The potential Lessee shall furnish the Tribe with the information and documentation required herein sufficient for the Tribe to identify and evaluate any significant environmental effects of the underlying action involved in the proposed lease.
- (f) **Restoration and Reclamation Plan.** If required by the Tribe, the proposed Lessee shall furnish the Tribe with a restoration and reclamation plan.
- (g) **Documentation of Ability and Technical Capacity.** The proposed Lessee shall furnish the Tribe with documents that demonstrate the ability of the proposed Lessee or proposed Lessee's agent or contractors to



successfully design, construct, or obtain the funding for a project similar to the proposed project and the technical capacity to construct, operate, maintain, and terminate the proposed project at the leased premises.

- (h) **Legal Entity Documentation.** If the proposed Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, the proposed Lessee shall furnish the Tribe with information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that: (1) The representative has authority to execute the Lease; (2) the Lease will be enforceable against the Lessee; and (3) the legal entity is in good standing and authorized to conduct business. The Tribe may waive these requirements for a tribal entity wholly owned by the Tribe given the Tribe's familiarity with and knowledge of the tribal entity.
- (i) **Proof of Insurance.** If required by the Tribe, the Lessee shall furnish the Tribe with certificates of insurance documenting that the Lessee has the required insurance coverages in the required amounts.
- (j) **Surety Bond.** If required by the Tribe, the Lessee shall furnish the Tribe with a Performance bond or other security.
- (k) **Intake of Proposed Leases.** Except for a tribal entity wholly owned by the Tribe, whenever a potential Lessee proposes a Lease on Tribal land, the Tribe shall require the applicant to present basic information to the Tribe about the Lease and the proposed uses and activities of the Lessee. The proposed Lessee shall either submit a written proposal to the Tribe or, at the request of the Tribe, fill out a Lease application form provided by the Tribe and, if available at the time of intake, identify the precise location and dimensions of the proposed lease premises and furnish copies of proposed plans and drawings or photographs showing the expected exterior appearance of any improvements to be constructed or any accessory equipment to be attached to structures at the leased premises. The applicant's written proposal or filled-out Lease application and any attachments shall be included in the written report documenting the environmental review of the action related to the proposed Lease.

502. **Tribe's Process for Approving a Lease.**

- (a) In order to approve a proposed Lease, the Tribe must determine that the Lease is in the Best Interest of the Tribe. In making that determination, the Tribe will:
  - (1) Review the Lease and supporting documents;

- (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
  - (3) Consider the relationship between the proposed use of the leased land and the existing uses of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed or installed on the leased land; the extent to which the proposed use will involve the use of access roads or utilities infrastructure on Tribal land; how the proposed use may require the provision of services from the Tribe or may consume resources of the Tribe; and the effect on the environment of the uses to which the leased lands will be subject; and,
  - (4) Require any Lease modifications or mitigation measures necessary to satisfy any requirements of applicable federal law or regulations or Tribal land use requirements.
- (b) Upon receiving a package of required Lease documents from the proposed Lessee, the Tribe will notify the proposed Lessee whether the package is or is not complete, as follows:
- (1) If the Lease documents package is not complete, the Tribe's notification letter will identify the missing information or documents required for a complete package.
  - (2) If the Lease documents package is complete, the Tribe will promptly acknowledge receipt of the complete package in writing.
- (c) After review of the complete package of required Lease documents and conducting due diligence review of the proposed site and other pertinent information, the Tribe will approve or disapprove the Lease within a reasonable time and provide a written determination of Lease approval or disapproval to the proposed Lessee and the basis for the determination.
- (d) Within thirty (30) days upon a determination of Lease approval, the Tribe should, absent extenuating circumstances, make arrangements for full execution of the Lease by authorized representatives of the parties, and the Tribe will furnish the Lessee with a true and complete copy of the fully executed Lease.

503. **Mandatory Provisions for Leases.** A Lease must contain all of the following:

- (a) Description of the leased premises by reference to the tract or parcel in an official or certified survey, if possible, or if not possible, by one or more of the following: (1) A legal description; (2) a survey-grade global positioning

system description; or (3) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

- (b) Identification of the purpose of the Lease and authorized uses of the leased premises.
- (c) Identification of the parties to the Lease.
- (d) Statement of the term of the Lease and any provisions for renewal.
- (e) Statement of the effective date of the Lease.
- (f) Identification of the ownership of Permanent improvements and the responsibility for constructing, operating, maintaining, and managing Permanent improvements, and removal of Permanent improvements, if applicable; state whether plans of development or construction schedules are required; generally, describe type and location of any Permanent improvements to be constructed by the Lessee.
- (g) Statement of rent payment requirements (including amount of rent, when rent is due) and late payment charges that apply, including interest, and any other special fees including in relation to nonpayment of rent, as well as to whom payments are made to at the Tribe and acceptable forms of payment.
- (h) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR Part 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.
- (i) Identification of due diligence requirements applicable to the Lease.
- (j) Identification of insurance requirements applicable to the Lease.
- (k) Identification of bonding requirements, and if a Performance bond or other bond is required, the Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects its obligations and liabilities.
- (l) Statement that the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in federal trust or restricted status.
- (m) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.

- (n) Statement that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (o) Statement that if historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
- (p) Statement that the Tribe, and the Secretary in his/her discretion, has the right, at any reasonable time during the term of the Lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance.
- (q) Statement regarding reports, surveys, site assessments, and other information or documentation that are needed to facilitate compliance with applicable environmental, cultural resource, and land use requirements, as appropriate; and statement that any failure by a Lessee to cooperate with a tribal request to make appropriate records, reports or information available for tribal inspection and duplication may be treated as a Violation of the Lease.
- (r) Statement that the Lessee shall defend, indemnify, and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.
- (s) Statement that the Lessee shall defend and indemnify the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the Lease, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's gross negligence or willful misconduct.
- (t) Statement that the Lease and any other Lease document, such as a Lease Amendment, Assignment, renewal, Sublease, or Leasehold Mortgage, will be provided to the BIA for recording in the LTRO.
- (u) Explanation of procedures for enforcement of Lease Violations that may include but are not be limited to the following: Defining a Lease Violation; describing the method for providing notice of Lease Violation; stating whether a cure period will apply and, if so, the amount of time for curing a Lease Violation; setting forth the process that will apply in the event that a

Lease Violation is not timely cured; and the process that will apply in the event of a Trespass or attempt to hold over after expiration or Cancellation of the Lease.

504. **Duration of Leases.**

- (a) **Maximum Terms.** The term of a general Business Lease shall not exceed 25 years, except that any such Lease may include an option to renew for up to two (2) additional terms, each of which may not exceed twenty-five (25) years. If a Lease includes an option to renew, it must also state: (1) the time and manner the option must be exercised or is automatically effective; (2) any additional consideration that is due upon the exercise of the option; and (3) any other conditions for renewal. In the case of a Lease for public, religious, educational, recreational, or cultural purposes, the Lease shall not exceed seventy-five (75) years.
- (b) **Minimum Terms.** Business Leases granted or approved under these Regulations shall be limited to the minimum duration, commensurate with the purpose of the Lease that will allow the highest economic return to the Tribe consistent with prudent management and conservation practices. Lessor may waive this requirement relating to minimum duration and highest economic return in the event the Lessor determines that such waiver is in its Best Interest, including in the event the Lease is for religious, educational, recreational, cultural, or other public purposes.
- (c) **Periodic Review and Rental Adjustments.** Unless the consideration for the Lease is based primarily on percentages of income produced by the land, the Lease shall provide for periodic review, at not less than five-year intervals, of the equities involved, and rental adjustment at such times in the event that a review results in the need for adjustment of rental compensation. For periodic reviews and rental adjustments, the Lease must state how and when the reviews and adjustments will be done, when any adjustments in rental payment amounts will become effective, whether an adjustment may be downward (and there may be no downward adjustment unless the Lease expressly states), and how disputes regarding adjustments are addressed. Lessor may waive this requirement for periodic reviews and rental adjustments in the event the Lessor determines that such waiver is in its Best Interest, including in the event the Lease is for religious, educational, recreational, cultural, or other public purposes.

505. **Determination of Amount of Rent to be Paid.**

- (a) **Fair Annual Rental Value.** Except as otherwise provided in this section, no leases shall be approved or granted with a rent requirement at less than the present Fair annual rental value.

- (b) **Appraisal.** Unless the Tribe determines it is in its Best Interest not to require an appraisal, the Fair annual rental value for a proposed Lease shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal.
- (c) **Exceptions for Permitted Lower Rent Levels.** Tribal land may be leased at less than the Fair annual rental value for religious, educational, recreational, cultural, or other public purposes, or for purposes of subsidization for the benefit of the Tribe, or in other cases in which the Tribe determines it is in its Best Interest.

506. **Surety Bond.** Unless otherwise provided in these Regulations, a satisfactory surety bond may be required in an amount that will reasonably assure performance of the contractual obligations under the Lease. Such bond may be for the purpose of guaranteeing: (1) not less than one year's rental unless the lease contract provides that the annual rental shall be paid in advance; (2) the estimated construction cost of any improvement to be placed on the land by the Lessee; or (3) an amount estimated to be adequate to insure compliance with any additional contractual obligations. The obligation for a surety bond may be fulfilled by an alternate security in the form of an irrevocable letter of credit from a bank or equivalent financial institution. The Tribe may waive the requirement for a surety bond if the Lessee is a government agency or has established a prior relationship with the Tribe through previous or existing Leases that demonstrates that the Lessee has fulfilled its rental payments and other obligations faithfully and satisfactorily, or if the Tribe otherwise determines a waiver is in the Tribe's Best Interest, including in the event the Lease is for religious, educational, recreational, cultural, or other public purposes. The bond must require the Surety to provide notice to the Tribe at least sixty (60) days prior to cancellation.

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

508. **Due Diligence Provisions.** If Permanent improvements are to be constructed by the Lessee in the leased premises, the Lease must include due diligence requirements that require the Lessee to complete construction of any Permanent improvements within the schedule specified in the Lease or in a general schedule of construction approved by the Tribe, and a process for changing the schedule by mutual consent of the parties. If construction of the Permanent improvements does not occur, or is not expected to be

completed, within the time period specified in the Lease, the Lessee must provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction, and otherwise comply with the due diligence requirements set out in the Lease. Failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease. The Tribe may waive the requirements of this section for Leases for religious, educational, recreational, cultural, or other public purposes, or if the Tribe determines that such a waiver is in the Best Interest of the Tribe.

**509. Ownership and Disposition of Permanent Improvements.**

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

**510. Special Requirements and Provisions for Leases.**

- (a) **No Preferential Right to Future Leases.** No Lease made pursuant to this Chapter shall provide the Lessee a preference right to future Leases, except as to a tribal entity wholly owned by the Tribe.
- (b) **Arrangements for Payment of Rent.** Rent shall be paid to Lessor. The Lease shall contain provisions identifying the dates rents shall become due and payable. Except with the approval of the Tribal Council, no Lease

shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. Leases made pursuant to this Chapter shall contain provisions for the payment of rentals to an account identified by the Tribal Council or as otherwise specified by Lessor and requiring Lessee to maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.

- (c) **Drainage or Irrigation Charges; Other Fees, Taxes, and Assessments.** Any Lease covering lands within an irrigation project or drainage district shall require the Lessee to pay annually on or before the due date all applicable drainage and irrigation charges assessed against such lands. The Lessee may be required to pay applicable fees, taxes, and assessments, if any, associated with the use of the leased premises. Such charges, fees, taxes, and assessments shall be in addition to the rental payments prescribed in the Lease.

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

512. **Subleases.** With the consent of the Tribe, the Lease may contain a provision authorizing the Lessee to sublease the premises, in whole or in part with the prior written approval of the Tribe through the Tribal Council. Subleases so made shall not serve to relieve the original Lessee from any liability nor diminish any supervisory authority of the Tribe provided under the approved Lease.

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



514. **Assignments.** An Assignment of any Lease under this Chapter may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

515. **Amendments.** An amendment of any Lease under this Chapter may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

516. **Effective Date.** In addition to a Lease, any Lease Amendment, Assignment, Sublease, and encumbrance, including a Leasehold Mortgage, must also state an effective date and include a severability provision whereby in the event any provision in the leasing instrument is found to be invalid by a court of competent jurisdiction, the remaining provisions will remain valid and in force so long as the original intention of the leasing instrument remains.

**CHAPTER 600. RESIDENTIAL LEASE REQUIREMENTS—COVERING LEASING FOR RESIDENTIAL PURPOSES (EXCLUDING SINGLE FAMILY RESIDENTIAL DEVELOPMENTS AND MULTI-FAMILY RESIDENTIAL DEVELOPMENTS)**

601. **Process for Obtaining a Lease.**

- (a) **Lease Application Form.** A proposed Lessee interested in obtaining a Lease for a site on Tribal land shall either submit a written proposal to the Tribe or, at the request of the Tribe, fill out a Lease application form provided by the Tribe which will ask for basic information about the proposed uses and activities of the Lessee, the improvements and facilities proposed to be constructed or installed at the site, and about the proposed Lessee.
- (b) **Determination of the Precise Location and Dimensions of the Leased Premises.** A proposed Lessee may propose the area or space on the Reservation that it desires for the leased premises, and the Tribe will determine its availability and suitability for the proposed use. If appropriate, the Tribe may indicate that another location on the Reservation is more suitable for the proposed leased premises. Once the general location of the proposed lease premises is determined, its precise dimensions must then be determined in order to meet the requirement for a proper description of the leased premises as required herein.
- (c) **Plans and Specifications of Proposed Improvements and Facilities.** In order to finalize a Lease, the proposed Lessee must deliver to the Tribe for review and approval preliminary plans of any improvements to be constructed and specifications of any equipment to be installed at the site. The Tribe may waive or modify this requirement in the event it determines such a waiver is in its Best Interest or in the event the Lease is for Housing for public purposes.

- (d) **Construction Schedules.** Prior to execution of the Lease, the proposed Lessee shall prepare and present to the Tribe for review and approval tentative construction schedules for Permanent improvements planned for the leased premises that include dates for commencement and completion of construction. The construction schedules may provide sets of dates for phased construction of improvements.
- (e) **Information and Documentation Required for Environmental Review.** The proposed Lessee shall furnish the Tribe with the information and documentation required herein sufficient for the Tribe to identify and evaluate any significant environmental effects of the underlying action involved in the proposed lease.
- (f) **Restoration and Reclamation Plan.** If required by the Tribe, the proposed Lessee shall furnish the Tribe with a restoration and reclamation plan.
- (g) **Documentation of Ability and Technical Capacity.** The proposed Lessee shall furnish the Tribe with documents that demonstrate the ability of the proposed Lessee or proposed Lessee's agent or contractors to successfully design, construct, or obtain the funding for the proposed residential use of the leased premises.
- (h) **Legal Entity Documentation.** If the proposed Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, the proposed Lessee shall furnish the Tribe with information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that: (1) The representative has authority to execute the Lease; (2) the Lease will be enforceable against the Lessee; and (3) the legal entity is in good standing and authorized to conduct business. The Tribe may waive these requirements for a tribal entity wholly owned by the Tribe given the Tribe's familiarity with and knowledge of the tribal entity.
- (i) **Proof of Insurance.** If required by the Tribe, the Lessee shall furnish the Tribe with certificates of insurance documenting that the Lessee has the required insurance coverages in the required amounts.
- (j) **Surety Bond.** If required by the Tribe, the Lessee shall furnish the Tribe with a Performance bond or other security.
- (k) **Intake of Proposed Leases.** Except for a tribal entity wholly owned by the Tribe, whenever a proposed Lessee proposes a Lease on Tribal land, the Tribe shall require the applicant to present basic information to the Tribe about the Lease and the proposed uses and activities of the Lessee. The proposed Lessee shall either submit a written proposal to the Tribe or, at

the request of the Tribe, fill out a Lease application form provided by the Tribe and, if available at the time of intake, identify the precise location and dimensions of the proposed lease premises and furnish copies of proposed plans and drawings or photographs showing the expected exterior appearance of any improvements to be constructed or any accessory equipment to be attached to structures at the leased premises. The applicant's written proposal or filled-out Lease application and any attachments shall be included in the written report documenting the environmental review of the action related to the proposed Lease.

**602. Tribe's Process for Approving a Lease.**

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

- (c) After review of the complete package of required Lease documents and conducting due diligence review of the proposed site and other pertinent information, the Tribe will approve or disapprove the Lease within a reasonable time and provide a written determination of Lease approval or disapproval to the proposed Lessee and the basis for the determination.
- (d) Within thirty (30) days upon a determination of Lease approval, the Tribe should, absent extenuating circumstances, make arrangements for full execution of the Lease by authorized representatives of the parties, and the Tribe will furnish the Lessee with a true and complete copy of the fully executed Lease.

603. **Mandatory Provisions for Leases.** A Lease must contain all of the following:

- (a) Description of the leased premises by reference to the tract or parcel in an official or certified survey, if possible, or if not possible, by one or more of the following: (1) A legal description; (2) a survey-grade global positioning system description; or (3) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Identification of the purpose of the Lease and authorized uses of the leased premises.
- (c) Identification of the parties to the Lease.
- (d) Statement of the term of the Lease.
- (e) Statement of the effective date of the Lease.
- (f) Identification of the ownership of Permanent improvements and the responsibility for constructing, operating, maintaining, and managing Permanent improvements, and removal of Permanent improvements, if applicable; state whether plans of development or construction schedules are required; generally, describe type and location of any Permanent improvements to be constructed by the Lessee.
- (g) Statement of rent payment requirements (including amount of rent, when rent is due) and late payment charges that apply, including interest, and any other special fees including in relation to nonpayment of rent, as well as to whom payments are made to at the Tribe and acceptable forms of payment.
- (h) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR Part 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term.

The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.

- (i) Identification of due diligence requirements applicable to the Lease.
- (j) Identification of insurance requirements applicable to the Lease.
- (k) Identification of bonding requirements, and if a Performance bond or other bond is required, the Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects its obligations and liabilities.
- (l) Statement that the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in federal trust or restricted status.
- (m) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.
- (n) Statement that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (o) Statement that if historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
- (p) Statement that the Tribe, and the Secretary in his/her discretion, has the right, at any reasonable time during the term of the Lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance.
- (q) Statement regarding reports, surveys, site assessments, and other information or documentation that are needed to facilitate compliance with applicable environmental, cultural resource, and land use requirements, as appropriate; and statement that any failure by a Lessee to cooperate with a tribal request to make appropriate records, reports or information available for tribal inspection and duplication may be treated as a Violation of the Lease.
- (r) Statement that the Lessee shall defend, indemnify, and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises; the Tribal Council may waive this requirement.

- (s) Statement that the Lessee shall defend and indemnify the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the Lease, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's gross negligence or willful misconduct.
- (t) Statement that the Lease and any other Lease document, such as an Lease Amendment, Assignment, renewal, Sublease, or Leasehold Mortgage, will be provided to the BIA for recording in the LTRO.
- (u) Explanation of procedures for enforcement of Lease Violations that may include but are not be limited to the following: Defining a Lease Violation; describing the method for providing notice of Lease Violation; stating whether a cure period will apply and, if so, the amount of time for curing a Lease Violation; setting forth the process that will apply in the event that a Lease Violation is not timely cured; and the process that will apply in the event of a Trespass or attempt to hold over after expiration or Cancellation of the Lease.

604. **Duration of Leases.**

- (a) **Maximum Terms.** Residential Leases may be for a term not to exceed seventy-five (75) years.
- (b) **Periodic Review and Rental Adjustments.** The Lease shall provide for periodic review, at not less than five-year intervals, of the equities involved, and rental adjustment at such times in the event that a review results in the need for adjustment of rental compensation. For periodic reviews and rental adjustments, the Lease must state how and when the reviews and adjustments will be done, when any adjustments in rental payment amounts will become effective, whether an adjustment may be downward (and there may be no downward adjustment unless the Lease expressly states), and how disputes regarding adjustments are addressed. Lessor may waive this requirement for periodic reviews and rental adjustments in the event the Lessor determines that such waiver is in its Best Interest or in the event the Lease is for Housing for public purposes.

605. **Determination of Amount of Rent to be Paid.**

- (a) **Fair Annual Rental Value.** Except as otherwise provided in this section, no leases shall be approved or granted with a rent requirement at less than the present Fair annual rental value.

- (b) **Appraisal.** Unless the Tribe determines it is in its Best Interest not to require an appraisal, the Fair annual rental value for a proposed Lease shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal.
- (c) **Exceptions for Permitted Lower Rent Levels.** Tribal land may be leased at less than the Fair annual rental value (and without an appraisal) if the Tribe determines it is in its Best Interest or the Lease is for Housing for a public purpose.

606. **Surety Bond.** A surety bond satisfactory to the Tribe may be required in an amount that will reasonably assure performance of the contractual obligations under the Lease. An obligation for a surety bond may be fulfilled by an alternate security in the form of an irrevocable letter of credit from a bank or equivalent financial institution. The Tribe may waive the requirement for a surety bond if the Tribe determines a waiver is in the Tribe's Best Interest or in the event the Lease is for Housing for public purposes. The bond must require the Surety to provide notice to the Tribe at least sixty (60) days prior to cancellation.

607. **Insurance.** The Lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do business in California, with a scope of coverage adequate to protect any improvements on the leased premises and to provide coverage for all damages, losses, claims, actions, and liabilities, including property damage, personal injuries and death, in an amount determined adequate by the Tribe, with the Tribe and the United States of America named as additional insureds. The Tribe may waive or modify these insurance requirements if determined to be in its Best Interest or in the event the Lease is for Housing for public purposes.

608. **Due Diligence Provisions.** If Permanent improvements are to be constructed by the Lessee in the leased premises, the Lease must include due diligence requirements that require the Lessee to complete construction of any Permanent improvements within the schedule specified in the Lease or in a general schedule of construction approved by the Tribe, and a process for changing the schedule by mutual consent of the parties. If construction of the Permanent improvements does not occur, or is not expected to be completed, within the time period specified in the Lease, the Lessee must provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction, and otherwise comply with the due diligence requirements set out in the Lease. Failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease. The Tribe may waive or modify the requirements of this section if the Tribe determines that such a waiver is in the Best Interest of the Tribe or in the event the Lease is for Housing for public purposes.

609. **Ownership and Disposition of Permanent Improvements.**

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

610. **Special Requirements and Provisions for Leases.**

- (a) **No Preferential Right to Future Leases.** No Lease made pursuant to this Chapter shall provide the Lessee a preference right to future Leases, except as to a tribal entity wholly owned by the Tribe.
- (b) **Arrangements for Payment of Rent.** Rent shall be paid to Lessor. The Lease shall contain provisions identifying the dates rents shall become due and payable. Except with the approval of the Tribal Council, no Lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. Leases made pursuant to this Chapter shall contain provisions for the payment of rentals to an account identified by the Tribal Council or as otherwise specified by Lessor and requiring Lessee to maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.
- (c) **Drainage or Irrigation Charges; Other Fees, Taxes, and Assessments.** Any Lease covering lands within an irrigation project or drainage district



shall require the Lessee to pay annually on or before the due date all applicable drainage and irrigation charges assessed against such lands. The Lessee may be required to pay applicable fees, taxes, and assessments, if any, associated with the use of the leased premises. Such charges, fees, taxes, and assessments shall be in addition to the rental payments prescribed in the Lease.

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

612. **Subleases.** With the consent of the Tribe, the Lease may contain a provision authorizing the Lessee to sublease the premises, in whole or in part with the prior written approval of the Tribe through the Tribal Council. Subleases so made shall not serve to relieve the original Lessee from any liability nor diminish any supervisory authority of the Tribe provided under the approved Lease.

613. **Encumbrances and Federally Sponsored Loan Programs.**

- (a) **Encumbrances.** With the consent of the Tribe, the Residential Lease may nonetheless contain a provision authorizing the Lessee to encumber the Lessee's leasehold interest in the premises for the purpose of borrowing capital for the development and improvement of the leased premises, such as by way of a Mortgage or deed of trust. The encumbrance instrument must receive the prior written approval of the Tribe through the Tribal Council (and the Tribe reserves the right to withhold approval of the encumbrance instrument for reasons including if the proposed loan amount exceeds the value of the interest being encumbered) and the Tribe may require that the encumbrance instrument give the Tribe a right of first refusal to purchase the encumbrance prior to a foreclosure under the approved encumbrance. In all events, where an encumbrancer, mortgagee, or lender may assign a Residential Lease, which includes a leasehold interest, such assignment may only be to a Tribal member, the Tribe, or the Tribe's housing authority. If a sale or foreclosure under the Tribe-approved encumbrance occurs and the encumbrancer is the purchaser, the encumbrancer may assign the leasehold without the approval of the Tribe if the Tribe-approved encumbrance document so provides; provided, however, that the assignee accepts and agrees in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the encumbrancer, such purchaser will be bound by the terms of the Lease and will assume in writing all the obligations thereunder.
- (b) **Federally Sponsored Loan Programs.** Notwithstanding subsection (a) of this section, with the prior written approval of the Tribal Council, a Lessee

may mortgage a Residential Lease through a Leasehold Mortgage pursuant to applicable Tribal law, code, ordinance, rule, policy, or procedure as adopted in relation to a federally sponsored loan program to finance housing for Tribal members, including programs offered through the U.S. Department of Housing and Urban Development, in a manner consistent with, and subject to the requirements of, the applicable Tribal law, code, ordinance, rule, policy, or procedure and the federally sponsored loan program.

614. **Assignments.** An Assignment of any Residential Lease issued may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

615. **Amendments.** An amendment of any Residential Lease may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

616. **Effective Date.** In addition to a Lease, any Lease Amendment, Assignment, Sublease, and encumbrance, including a Leasehold Mortgage, must also state an effective date and include a severability provision whereby in the event any provision in the leasing instrument is found to be invalid by a court of competent jurisdiction, the remaining provisions will remain valid and in force so long as the original intention of the leasing instrument remains.

## **CHAPTER 700: WIND AND SOLAR RESOURCE LEASES AND WIND ENERGY EVALUATION LEASES**

701. **Purposes of Incorporating Standards for Wind and Solar Resource Leases and Wind Energy Evaluation Leases into the Tribal Leasing Regulations.** The Tribe has developed this Chapter to provide standards for Wind and solar resource (WSR) Leases and Wind energy evaluation leases (WEELs) as part of these Regulations.

### **WIND AND SOLAR RESOURCES (WSR) LEASES**

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

703. **Term of a WSR Lease.** A WSR Lease must provide for a definitive Lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The initial term shall not exceed twenty-five (25) years, and there can be one (1) renewal term not to exceed twenty-five (25) years, for a combined maximum term (initial

plus renewal) of fifty (50) years. If a Lease includes an option to renew, it must also state (1) the time and manner the option must be exercised or automatically effective, (2) any additional consideration that is due upon the exercise of the option, and (3) any other conditions for renewal. The appropriate length of the WSR Lease term and of any renewal terms will be based on reasonable factors, such as the purpose of the Lease, the type of financing to be used for paying the costs of the proposed installations, the level of investment to be made by the Lessee, and that the WSR Lease may not be extended by Holdover.

704. **Periodic Review and Rental Adjustments.** Unless the consideration for the Lease is based primarily on percentages of income produced by the land, the Lease shall provide for periodic review, at not less than five-year intervals, of the equities involved, and rental adjustment at such times in the event that a review results in the need for adjustment of rental compensation. For periodic reviews and rental adjustments, the Lease must state how and when the reviews and adjustments will be done, when any adjustments in rental payment amounts will become effective, whether an adjustment may be downward (and there may be no downward adjustment unless the Lease expressly states), and how disputes regarding adjustments are addressed. Unless the Lease expressly provides otherwise, Lessor makes the rental adjustment so long as reasonable. Lessor may waive this requirement for periodic reviews and rental adjustments in the event the Lessor determines that such waiver is in its Best Interest.

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

- (a) Identification of the leased premises by reference to the tract or parcel in an official or certified survey, if possible, or if not possible, by one or more of the following: (1) A legal description; (2) a survey-grade global positioning system description; or (3) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Identification of the purpose of the WSR Lease and authorized uses of the leased premises.
- (c) Identification of the parties to the Lease.
- (d) Statement of the term of the Lease, any provisions for renewal, and the effective date.
- (e) Identification of the ownership of Permanent improvements and the responsibility for constructing, operating, maintaining, and managing WSR equipment, access roads, transmission lines and related facilities, and removal of Permanent improvements, if applicable; state whether plans of development or construction schedules are required; generally describe type and location of any Permanent improvements to be constructed by the Lessee.

- (f) Identification of who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission.
- (g) Statement of payment requirements (including amount of rent, when rent is due) and late payment charges that apply, including interest, and any other special fees including in relation to nonpayment of rent, as well as to whom payments are made to at the Tribe and acceptable forms of payment; and a statement requiring Lessee to maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.
- (h) Identification of due diligence requirements that require the Lessee to:
  - (1) Commence installation of energy facilities within two (2) years after the effective date of the Lease or consistent within a timeframe in the resource development plan;
  - (2) If installation does not occur, or is not expected to be completed, within the time period specified in this sub-section, provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
  - (3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan;
  - (4) Repair, place into service, or remove from the site within a time period specified in the Lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the Lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season); and
  - (5) that specify that failure of the Lessee to comply with due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease.
- (i) Identification of the insurance policies that the Lessee must provide to protect the interests of the Tribe and in the amounts sufficient to protect all insurable Permanent improvements on the leased premises, which may include property, liability, and casualty insurance, and identifying the Tribe and the United States as additional insured parties, provided that the

insurance requirement may be waived if the WSR Lease is for less than fair annual value or for nominal compensation, or if the Tribe determines that a waiver of all or part of the otherwise required insurance is in its Best Interest.

- (j) Bonding requirements and, if a Performance bond or other bond is required, the WSR Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects its obligations and liabilities. The bond must require the Surety to provide notice to the Tribe at least sixty (60) days prior to cancellation.
- (k) Statement that the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in federal trust or restricted status.
- (l) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.
- (m) Statement that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (n) Statement that if historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
- (o) Statement that the Tribe, and the Secretary at his/her discretion, 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.
- (p) Statement regarding reports, surveys, site assessments, and other information or documentation that are needed to facilitate compliance with applicable environmental, cultural resource, and land use requirements, as appropriate; and statement that any failure by a Lessee to cooperate with a tribal request to make appropriate records, reports or information available for tribal inspection and duplication may be treated as a Violation of the Lease.
- (q) Statement that the Lessee shall defend, indemnify, and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

- (r) Statement that the Lessee shall defend and indemnify the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the Lease, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's gross negligence or willful misconduct.
- (s) Statement that the Lease and any other Lease document, such as a Lease Amendment, Assignment, renewal, Sublease, or Leasehold Mortgage, will be provided to the BIA for recording in the LTRO.
- (t) Explanation of procedures for enforcement of Lease Violations that may include but are not be limited to the following: Defining a Lease Violation; describing the method for providing notice of Lease Violation; stating whether a cure period will apply and, if so, the amount of time for curing a Lease Violation; setting forth the process that will apply in the event that a Lease Violation is not timely cured; and the process that will apply in the event of a Trespass or attempt to hold over after expiration or Cancellation of the Lease.
- (u) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR Part 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term; the Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Lessee may be required to pay applicable fees, taxes, and assessments, if any, associated with the use of the leased premises. Such charges, fees, taxes, and assessments shall be in addition to the rental payments prescribed in the Lease.
- (v) If required by the Tribe, an obligation for the Lessee to furnish the Tribe with a restoration and reclamation plan that is acceptable to the Tribe.

**706. How Ownership of Permanent Improvements Will Be Addressed in a WSR Lease.** A WSR Lease must specify who will own any Permanent improvements the Lessee installs during the term of the WSR Lease and may specify under what conditions, if any, Permanent improvements the Lessee constructs may be conveyed to the Tribe during the term of the WSR Lease. In addition, the WSR Lease must indicate whether each specific Permanent improvement the Lessee installs will: (i) Remain on the leased premises upon the expiration, Termination, or Cancellation of the WSR Lease in a condition satisfactory to the Tribe and become the property of the Tribe; (ii) be removed within a time period specified in the WSR Lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the Permanent improvements; or (iii) be disposed of by other specified means. A WSR Lease that requires the Lessee to remove the Permanent improvements

must also provide the Tribe with an option to take possession of and title to the Permanent improvements if the improvements are not removed within the specified time period.

707. **Effective Date of a WSR Lease.** A WSR Lease becomes effective on the date that the Tribe approves the WSR Lease. Notwithstanding the above, the WSR Lease may specify another date on which the obligations between the parties are triggered, and such date may be before or after the date that the Tribe approves the WSR Lease; the Lease must specify the effective date. In addition to a Lease, any Lease Amendment, Assignment, Sublease, and encumbrance must also state an effective date and include a severability provision whereby in the event any provision in the leasing instrument is found to be invalid by a court of competent jurisdiction, the remaining provisions will remain valid and in force so long as the original intention of the leasing instrument remains.

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

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

- (a) Approval of the Tribe through the Tribal Council;
- (b) The Lessee is in good standing regarding performance of its obligations under the WSR Lease, and there are no pending uncured defaults of the Lessee; and
- (c) The amendment must be in writing and fully executed by authorized representatives of the parties.

710. **Tribe's Approval Process for an Amendment of a WSR Lease.** The Tribe will generally approve a proposed amendment of a WSR Lease unless at least one of the following is true: (i) The Lessee is in Violation of the WSR Lease; or (ii) the Tribe finds a reason to withhold approval of the proposed amendment in order to protect the Best Interest of the Tribe. Execution of an amendment by an authorized tribal official together with Tribal Council approval serves as approval for the amendment.

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

- (a) Written approval of the Tribe through the Tribal Council, except for assignment to a distinct legal entity specified in the WSR Lease as a pre-approved assignee or to a wholly owned subsidiary of the Lessee;

- (b) The assignee agrees in writing to assume all of the obligations and conditions of the WSR Lease;
- (c) The assignee agrees in writing that any transfer of the WSR Lease will be in accordance with applicable law;
- (d) The Lessee is in good standing regarding performance of its obligations under the WSR Lease, and there are no pending uncured defaults of the Lessee; and
- (e) The Assignment must be in writing and fully executed by authorized representatives of the parties.

712. **Tribe's Approval Process for an Assignment of a WSR Lease.** The Tribe will generally approve a proposed Assignment of a WSR Lease unless at least one of the following is true: (i) The Lessee is in Violation of the WSR Lease; (ii) the assignee does not agree to be bound by the terms of the WSR Lease; or (iii) the Tribe finds a reason to withhold approval of the proposed Assignment in order to protect the Best Interest of the Tribe. In determining whether or not there is a reason to withhold approval of a proposed Assignment, the Tribe may consider factors including whether: (i) The value of any part of the leased premises not covered by the Assignment would be adversely affected; (ii) if a Performance bond is required, whether the assignee has posted the bond or security; and (iii) whether the assignee has provided the Tribe with supporting documents that demonstrate that the Lease will be enforceable against the assignee and that the assignee will be able to perform its obligations under the WSR Lease or the Assignment.

713. **Subleasing a WSR Lease.** A Lessee may sublease a WSR Lease by meeting the following requirements:

- (a) Written approval of Sublease by the Tribe through the Tribal Council;
- (b) The Sublease does not relieve the Lessee/sublessor of any liability;
- (c) The Sublease must be in writing, and be fully executed by authorized representatives of the parties; and
- (d) A copy of the fully executed Sublease must be provided to the Tribe within thirty (30) days after it is fully executed.

714. **Tribe's Approval Process for a Sublease of a WSR Lease.** The Tribe will generally approve a proposed Sublease of a WSR Lease unless a least one of the following is true: (i) The Lessee is in Violation of the WSR Lease; (ii) the Lessee will not remain liable under the WSR Lease; or (iii) the Tribe finds a reason to withhold approval in order to protect the Best Interest of the Tribe.



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

- (a) Written approval of the encumbrance instrument by the Tribe;
- (b) That the encumbrance instrument does not include any mortgaging of Tribal land itself;
- (c) The encumbrance instrument must be in writing, and be fully executed by authorized representatives of the parties; and
- (d) A copy of the fully executed encumbrance instrument must be provided to the Tribe within 30 days after it is fully executed.

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

717. **Tribal Investigation of Compliance with a WSR Lease.** The Tribe has the authority to direct a designated officer, employee or agent to enter the leased premises at any reasonable time, and consistent with any notice requirements under applicable Tribal law and applicable Lease documents, to determine if the Lessee is in compliance with the applicable requirements of the WSR Lease and to protect the interests of the Tribe. If a member of the Tribe notifies the Tribe that a specific Violation of the WSR Lease has occurred, the Tribe will promptly initiate an appropriate investigation.

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

## **WIND ENERGY EVALUATION LEASES (WEELS)**

721. **Purpose of Wind Energy Evaluation Leases (WEELs).** Wind energy evaluation leases (WEELs) are short-term Leases that authorize possession of Tribal land for the purpose of installing, operating, and maintaining instrumentation, and

associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation.

722. **Term of Wind Energy Evaluation Leases (WEELs)**. A WEEL must provide for a definitive term that is no longer than three (3) years and may provide for one renewal period not to exceed three (3) years. The Lessee's exercise of the option to renew the WEEL must be in writing and must specify (i) the time and manner in which the option may be exercised or is automatically effective; and (ii) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term.

723. **Mandatory Provisions of WEELs**. A WEEL must contain all of the following:

- (a) Identification of the tract or parcel being leased by reference to a public or private survey, if possible, and if not possible, then by one or more of the following: (i) a legal description; (ii) a survey-grade global positioning system description; or (iii) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Identification of the parties, purpose of the WEEL, and authorized uses of the leased premises.
- (c) Statement of the term of the WEEL, any provisions for renewal, and the effective date.
- (d) Identification of the ownership of Permanent improvements and the responsibility for constructing, operating, maintaining, and managing Permanent improvements, and removal of Permanent improvements, if applicable; state whether plans of development or construction schedules are required; generally, describe type and location of any Permanent improvements to be constructed by the Lessee.
- (e) Statement of rent and any other Lessee payment requirements (including amount of rent and when rent is due) and late payment charges that apply, including interest, and any other special fees including in relation to non-payment of rent, as well as to whom payments are made to at the Tribe and acceptable forms of payment; and a statement requiring Lessee to maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States. Because of the relative short duration of WEELs, there will typically not be a rental adjustment requirement. If for a given WEEL there is a requirement for a periodic review and rental adjustment, the Lease must state how and when the reviews and adjustments will be done, when any adjustments in rental payment amounts will become effective, whether an adjustment may be downward (and there may be no downward adjustment

unless the Lease expressly states), and how disputes regarding adjustments are addressed.

- (f) An equipment installation plan must be submitted to the Tribe by the intended Lessee under a WEEL for review and approval showing the location of proposed Permanent improvements, identifying the types of proposed improvements, and the schedule for site preparation, construction and installation of improvement or equipment, including any plans for phase development. Material changes to the initial equipment installation plan require that a revised equipment installation plan be provided to the Tribe for review and approval.
- (g) Identification of due diligence requirements that require: (i) that the Lessee install testing and monitoring facilities within twelve (12) months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and (ii) if installation does not occur, or is not expected to be completed, within the time period specified in requirement (i) above, that the Lessee provide the Tribe with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities. The WEEL must also specify the Lessee's exposure to sanctioning consequences for failure to comply with the due diligence requirements.
- (h) If the WEEL is executed by party representatives, identification of the party represented and the authority under which the action is taken.
- (i) Statement that the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in federal trust or restricted status.
- (j) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.
- (k) Statement that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (l) Statement that if historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the WEEL, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the Lessee with contact the Tribe to determine how to proceed and appropriate disposition.

- (m) Statement that the Tribe, and the Secretary in his/her discretion, has the right, at any reasonable time during the term of the WEEL, and upon reasonable notice to enter the leased premises for inspection.
- (n) Statement regarding reports, surveys, site assessments, and other information or documentation that are needed to facilitate compliance with applicable environmental, cultural resource, and land use requirements, as appropriate; and statement that any failure by a Lessee to cooperate with a tribal request to make appropriate records, reports or information available for tribal inspection and duplication may be treated as a Violation of the WEEL.
- (o) Statement that the Lessee shall defend, indemnify and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.
- (p) Statement that the Lessee shall defend and indemnify the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the WEEL, regardless of fault, with the exception that the Lessee is not required to indemnify the Tribe for liability or cost arising from the Tribe's gross negligence or willful misconduct.
- (q) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR Part 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term; the Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Lessee may be required to pay applicable fees, taxes, and assessments, if any, associated with the use of the leased premises. Such charges, fees, taxes, and assessments shall be in addition to the rental payments prescribed in the Lease.
- (r) Statement that the Lease and any other Lease document, such as a Lease Amendment, renewal, Assignment, Sublease, or Leasehold Mortgage, will be provided to the BIA for recording in the LTRO.
- (s) Explanation of procedures for enforcement of Lease Violations that may include but are not be limited to the following: Defining a Lease Violation; describing the method for providing notice of Lease Violation; stating whether a cure period will apply and, if so, the amount of time for curing a Lease Violation; setting forth the process that will apply in the event that a Lease Violation is not timely cured; and the process that will apply in the event of a Trespass or attempt to hold over after expiration or Cancellation of the Lease.

724. **Optional but Not Mandatory Elements of WEELs.**

- (a) **Noncompeting Compatible Uses.** A WEEL may authorize others to use part of the leased premises for other noncompeting uses compatible with the purpose of the WEEL, such as grazing or storage, provided that any such use by others will not reduce or offset the monetary compensation due to the Tribe for the WEEL.
- (b) **Option for a WSR Lease.** A WEEL may provide for an option period following the expiration of a the WEEL term during which the Lessee and the Tribe may enter into a WSR Lease, provided that approval of a WEEL that contains an option to enter into a WSR Lease does not guarantee or imply approval of any WSR Lease.
- (c) **Valuation.** A valuation may be used to set the compensation due for a WEEL, but a valuation is not required for a WEEL.
- (d) **Performance Bond or Other Security.** Unless the Tribe determines necessary, a Performance bond or alternative form of security is not required for a WEEL. If a Performance bond or other bond is required, the Performance bond requirements must be included in the Lease, and the WEEL must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects its obligations and liabilities. The bond must require the Surety to provide notice to the Tribe at least sixty (60) days prior to cancellation.
- (e) **Insurance.** While normally a Lessee must provide insurance for a WEEL, the insurance requirement may be waived if the WEEL is for less than Fair annual rental value or for nominal compensation, or if the Tribe determines that a waiver of insurance is in its Best Interest. Insurance must identify both the Tribe and the United States as additional insureds.

725. **How Ownership of Permanent Improvements Will Be Addressed in a WEEL.**

A WEEL must specify who will own any Permanent improvements the Lessee installs during the term of the WEEL and also must indicate whether any Permanent improvements the Lessee installs under the WEEL: (i) Will remain on the leased premises upon expiration, Termination or Cancellation of the WEEL in a condition satisfactory to the Tribe; (ii) may be conveyed to the Tribe during the WEEL term and under what conditions the Permanent improvements may be conveyed; (iii) will be removed within a time period specified in the WEEL, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before installation of the Permanent improvements; or (iv) will be disposed of by other specified means. A WEEL that requires the Lessee to remove the Permanent improvements must also provide the Tribe with an option to take possession and title to the Permanent improvements if the improvements are not removed within the specified time period.

726. **Ownership and Handling of Energy Resource Information Obtained Under a WEEL.** The WEEL must specify the ownership of any energy resource information the Lessee obtains at the leased premises during the WEEL term. Unless otherwise specified in the WEEL, the energy resource information the Lessee obtains through the leased activity becomes the property of the Tribe at the expiration, Termination, or Cancellation of the WEEL or upon failure of the Lessee to diligently install testing and monitoring facilities on the leased premises within the time periods specified in the due diligence provisions herein.

727. **Documents Required for Tribe's Approval of a WEEL.** A Lessee of the leased premises must submit the following documents to the Tribe in order to obtain the Tribe's approval of the WEEL:

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

against the Lessee; and (iii) the legal entity is in good standing and authorized to conduct business.

**728. Tribe's Approval Process for a WEEL.**

- (a) As a critical preliminary step, the Tribe must determine that the WEEL is in the Best Interest of the Tribe. In making that determination, the Tribe will:
  - (1) Review the WEEL and supporting documents;
  - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances; and
  - (3) Require any Lease modifications or mitigation measures necessary to satisfy any requirements, including any other federal or Tribal land use requirements.
- (b) Upon receiving the WEEL package of documents, the Tribe will notify the proposed Lessee by a written letter whether the package is or is not complete, i.e., whether or not it includes all the information and documents required for a WEEL. If the WEEL package is not complete, the notification letter will identify the missing information or documents required for a complete package. If the WEEL package is complete, the notification letter will acknowledge that the package was complete and that upon review the Tribe will either approve the WEEL or disapprove it and return the package with written instructions for required revision. The Tribe's determination of approval or disapproval of the proposed WEEL, and the basis for such determination, will be provided to the proposed Lessee in writing.
- (c) The Tribe will generally approve a proposed WEEL unless one of the following occurs: (i) The requirements in this Chapter applicable to WEELs have not been met; or (ii) the Tribe finds a reason to withhold approval in order to protect the Best Interests of the Tribe.
- (d) If the Tribe determines that the proposed WEEL is approved, fully executed copies of the WEEL will be provided to the Lessee and lodged in the Tribe's official records.

**729. Effective Date of a WEEL.** A WEEL becomes effective as of the effective date specified in the WEEL document. In addition to a Lease, any Lease Amendment, Assignment, Sublease, and encumbrance must also state an effective date and include a severability provision whereby in the event any provision in the leasing instrument is found to be invalid by a court of competent jurisdiction, the remaining provisions will remain valid and in force so long as the original intention of the leasing instrument remains.

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

731. **Amendment, Assignment, Subleasing or Mortgaging a WEEL.** The parties may amend, assign, sublease, or encumber/mortgage a WEEL only by following the procedures and meeting the requirements for amending, assigning, subleasing, or encumbering/mortgaging a Wind and solar resources (WSR) lease set forth herein.

732. **Tribal Investigation of Compliance with a WEEL.** The Tribe has the authority to direct a designated officer, employee or agent to enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable Tribal law and applicable Lease documents, to determine if the Lessee is in compliance with the applicable requirements of the WEEL and to protect the interests of the Tribe and of any Indians holding Tribal land assignments nearby the leased premises.

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

## **CHAPTER 800. AGRICULTURAL LEASES**

An Agricultural Lease of Tribal land may be entered for agricultural purposes, specifically for the production of crops, livestock or other agricultural products.

### **801. Process for Obtaining a Lease.**

- (a) **Lease Application Form.** A potential Lessee interested in obtaining a Lease for a site on Tribal land shall either submit a written proposal to the Tribe or, at the request of the Tribe, fill out a Lease application form provided by the Tribe which will ask for basic information about the proposed uses and activities of the Lessee, the improvements and facilities proposed to be constructed or installed at the site, and about the potential Lessee.
- (b) **Determination of the Precise Location and Dimensions of the Leased Premises.** A potential Lessee may propose the area or space on the Reservation that it desires for the leased premises, and the Tribe will determine its availability and suitability for the proposed use. If appropriate, the Tribe may indicate that another location on the Reservation is more suitable for the proposed leased premises. Once the general location of the proposed lease premises is determined, its precise



dimensions must then be determined in order to meet the requirement for a proper description of the leased premises set forth herein.

- (c) **Plans and Specifications of Proposed Improvements and Facilities.** In order to finalize a Lease, the proposed Lessee must deliver to the Tribe for review and approval preliminary plans of any improvements to be constructed and specifications of any equipment to be installed at the site.
- (d) **Construction Schedules.** Prior to execution of the Lease, the proposed Lessee shall prepare and present to the Tribe for review and approval tentative construction schedules for Permanent improvements planned for the leased premises that include dates for commencement and completion of construction. The construction schedules may provide sets of dates for phased construction of improvements.
- (e) **Information and Documentation Required for Environmental Review.** The potential Lessee shall furnish the Tribe with the information and required herein sufficient for the Tribe to identify and evaluate any significant environmental effects of the underlying action involved in the proposed Lease.
- (f) **Restoration and Reclamation Plan.** If required by the Tribe, the proposed Lessee shall furnish the Tribe with a restoration and reclamation plan.
- (g) **Documentation of Ability and Technical Capacity.** The proposed Lessee shall furnish the Tribe with documents that demonstrate the ability of the proposed Lessee or proposed Lessee's agent or contractors to successfully design, construct, or obtain the funding for a project similar to the proposed project and the technical capacity to construct, operate, maintain, and terminate the proposed project at the leased premises.
- (h) **Legal Entity Documentation.** If the proposed Lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, the proposed Lessee shall furnish the Tribe with information such as organizational and financial documents, certificates, filing records, and resolutions, that demonstrates that: (1) The representative has authority to execute the Lease; (2) The Lease will be enforceable against the Lessee; (3) The legal entity is in good standing and authorized to conduct business, and (4) The proposed Lessee will be able to perform the Lease obligations. The Tribe may waive any requirements in these Regulations for a tribal entity wholly owned by the Tribe.
- (i) **Proof of Insurance.** If required by the Tribe, the Lessee shall furnish the Tribe with certificates of insurance documenting that the Lessee has the required insurance coverages in the required amounts.

- (j) **Surety Bond.** If required by the Tribe, the Lessee shall furnish the Tribe with a Performance bond or other security.
- (k) **Intake of Proposed Leases.** Except for a tribal entity wholly owned by the Tribe, whenever a potential Lessee proposes a Lease on Tribal land, the Tribe shall require the applicant to present basic information to the Tribe about the Lease and the proposed uses and activities of the Lessee. The proposed Lessee shall either submit a written proposal to the Tribe or, at the request of the Tribe, fill out a Lease application form provided by the Tribe and, if available at the time of intake, identify the precise location and dimensions of the proposed lease premises and furnish copies of proposed plans and drawings or photographs showing the expected exterior appearance of any improvements to be constructed or any accessory equipment to be attached to structures at the leased premises. The applicant's written proposal or filled-out Lease application and any attachments shall be included in the written report documenting the environmental review of the action related to the proposed Lease.

802. **Tribe's Process for Approving an Agricultural Lease.**

- (a) In order to approve a proposed Agricultural Lease, the Tribe must determine that the Lease is in the Best Interest of the Tribe. In making that determination, the Tribe will:
  - (1) Review the Lease and supporting documents;
  - (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
  - (3) Consider the relationship between the proposed use of the leased land and the existing uses of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed or installed on the leased land; the extent to which the proposed use will involve the use of access roads or utilities infrastructure on Tribal land; how the proposed use may require the provision of services from the Tribe or may consume resources of the Tribe; and the effect on the environment of the uses to which the leased lands will be subject.
  - (4) Require any Lease modifications or mitigation measures necessary to satisfy any requirements of applicable federal law or regulations or Tribal land use requirements.

- (b) Upon receiving a package of required Agricultural Lease documents from the proposed Lessee, the Tribe will notify the proposed Lessee whether the package is or is not complete, as follows:
  - (1) If the Agricultural Lease documents package is not complete, the Tribe's notification letter will identify the missing information or documents required for a complete package.
  - (2) If the Agricultural Lease documents package is complete, the Tribe will promptly acknowledge receipt of the complete package in writing.
- (c) After review of the complete package of required Agricultural Lease documents and conducting due diligence review of the proposed site and other pertinent information, the Tribe will approve or disapprove the Lease within a reasonable time and provide a written determination of Lease approval or disapproval to the proposed Lessee and the basis for the determination.
- (d) Promptly upon a determination of Lease approval, the Tribe will make arrangements for full execution of the Lease by authorized representatives of the parties, and the Tribe will furnish the Lessee with a true and complete copy of the fully executed Lease.

803. **Mandatory Provisions for Agricultural Leases.** An Agricultural Lease must contain all of the following:

- (a) Description of the leased premises by reference to the tract or parcel in an official or certified survey, if possible, or if not possible, by one or more of the following: (1) A legal description; (2) a survey-grade global positioning system description; or (3) another description prepared by a registered land surveyor that is sufficient to identify the leased premises.
- (b) Identification of the purpose of the Lease and authorized uses of the leased premises.
- (c) Identification of the parties to the Lease.
- (d) Statement of the term of the Lease and any provision for renewal.
- (e) Statement of the effective date of the Lease, which may not be more than one year after the Lease approval by the Tribe.
- (f) Identification of the ownership of Permanent improvements and the responsibility for constructing, operating, maintaining, and managing Permanent improvements, and removal of Permanent improvements, if

applicable; state whether plans of development or construction schedules are required; generally describe type and location of any Permanent improvements to be constructed by the Lessee.

- (g) Statement of rent payment requirements (including amount of rent, when rent is due) and late payment charges that apply, including interest, and any other special fees including in relation to nonpayment of rent, as well as to whom payments are made to at the Tribe and acceptable forms of payment.
- (h) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, the Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district.
- (i) Identification of due diligence requirements applicable to the Lease.
- (j) Identification of insurance requirements applicable to the Lease.
- (k) Identification of bonding requirements, and if a Performance bond or other bond is required, the Lease must state that the Lessee must obtain the consent of the Surety for any legal instrument that directly affects its obligations and liabilities.
- (l) Statement that the obligations of the Lessee and its sureties to the Tribe are also enforceable by the United States, so long as the land remains in federal trust or restricted status.
- (m) Statement that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises.
- (n) Statement that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.
- (o) Statement that if historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains or items will cease, and the Lessee will contact the Tribe to determine how to proceed and appropriate disposition.
- (p) Statement that the Tribe, and the Secretary in his/her discretion, has the right, at any reasonable time during the term of the Lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance.

- (q) Statement regarding reports, surveys, site assessments, and other information or documentation that are needed to facilitate compliance with applicable environmental, cultural resource, and land use requirements, as appropriate; and statement that any failure by a Lessee to cooperate with a tribal request to make appropriate records, reports or information available for tribal inspection and duplication may be treated as a Violation of the Lease.
- (r) Statement that the Lessee shall defend, indemnify, and hold harmless the Tribe and the United States from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.
- (s) Statement that the Lessee shall defend and indemnify the Tribe and the United States against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the term of the Lease, regardless of fault.
- (t) Statement that the Lease and any other Lease document, such as a Lease Amendment, Assignment, renewal, Sublease, or Leasehold Mortgage, will be provided to the BIA for recording in the LTRO.
- (u) Explanation of procedures for enforcement of Lease violations that may include but are not be limited to the following: Defining a Lease Violation; describing the method for providing notice of Lease Violation; stating whether a cure period will apply and, if so, the amount of time for curing a Lease Violation; setting forth the process that will apply in the event that a Lease Violation is not timely cured; and the process that will apply in the event of a Trespass or attempt to hold over after expiration or Cancellation of the Lease.
- (v) Statement that agricultural operations be conducted in accordance with recognized principles of sustained yield management, integrated resource management planning, sound conservation practices, and other community goals as expressed in applicable Tribal laws, leasing policies, or agricultural resource management plans.
- (w) Appropriate stipulations or conservation plans must be developed and incorporated.

804. **Duration of Leases.**

- (a) **Maximum Terms.** The term of an Agricultural Lease shall not exceed twenty-five (25) years, except that any such Lease may include an option

to renew for up to two (2) additional terms, each of which may not exceed twenty-five (25) years. If a Lease includes an option to renew, it must also state (1) the time and manner the option must be exercised or is automatically effective, (2) any additional consideration that is due upon the exercise of the option, and (3) any other conditions for renewal.

- (b) **Minimum Terms.** Leases granted or approved under these Regulations shall be limited to the minimum duration, commensurate with the purpose of the Lease that will allow the highest economic return to Lessor consistent with prudent management and conservation practices. Lessor may waive this requirement relating to minimum duration and highest economic return in the event the Lessor determines that such waiver is in its Best Interest.
- (c) **Periodic Review and Rental Adjustments.** Unless the consideration for the Lease is based primarily on percentages of income produced by the land, the Lease shall provide for periodic review, at not less than five-year intervals, of the equities involved, and rental adjustment at such times in the event that a review results in the need for adjustment of rental compensation. For periodic reviews and rental adjustments, the Lease must state how and when the reviews and adjustments will be done, when any adjustments in rental payment amounts will become effective, whether an adjustment may be downward (and there may be no downward adjustment unless the Lease expressly states), and how disputes regarding adjustments are addressed. Lessor may waive this requirement for periodic reviews and rental adjustments in the event the Lessor determines that such waiver is in its Best Interest.

805. **Determination of Amount of Rent to be Paid.**

- (a) **Fair Annual Rental Value.** Except as otherwise provided in this section, no Leases shall be approved or granted with a rent requirement at less than the present Fair annual rental value.
- (b) **Appraisal.** The Fair annual rental value for a proposed Lease shall be determined by an appraisal performed by a licensed appraiser utilizing a commonly accepted method of appraisal.
- (c) **Exceptions for Permitted Lower Rent Levels.** If the Tribe determines it is in its Best Interest, Tribal land may be leased at less than the Fair annual rental value.

806. **Surety Bond.** Unless otherwise provided in these Regulations or waived by the Tribe, a satisfactory surety bond may be required in an amount that will reasonably assure performance of the contractual obligations under the Lease. Such bond may be for the purpose of guaranteeing: (1) not less than one year's rental unless the lease

contract provides that the annual rental shall be paid in advance; (2) the estimated construction cost of any improvement to be placed on the land by the Lessee; or (3) an amount estimated to be adequate to insure compliance with any additional contractual obligations. The obligation for a surety bond may be fulfilled by an alternate security in the form of an irrevocable letter of credit from a bank or equivalent financial institution. The Tribe may waive the requirement for a surety bond if the Lessee is a government agency or has established a prior relationship with the Tribe through previous or existing Leases that demonstrates that the Lessee has fulfilled its rental payments and other obligations faithfully and satisfactorily, or if the Tribe otherwise determines a waiver is in the Tribe's Best Interest. The bond must require the Surety to provide notice to the Tribe at least sixty (60) days prior to cancellation.

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

808. **Due Diligence Provisions.** If Permanent improvements are to be constructed by the Lessee in the leased premises, the Agricultural Lease must include due diligence requirements that require the Lessee to complete construction of any Permanent improvements within the schedule specified in the Lease or in a general schedule of construction approved by the Tribe, and a process for changing the schedule by mutual consent of the parties. If construction of the Permanent improvements does not occur, or is not expected to be completed, within the time period specified in the Lease, the Lessee must provide the Tribe with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction, and otherwise comply with the due diligence requirements set out in the Lease. Failure of the Lessee to comply with the due diligence requirements of the Lease is a Violation of the Lease and may lead to cancellation of the Lease. The Tribe may waive the requirements of this section if the Tribe determines that such a waiver is in the Best Interests of the Tribe.

809. **Ownership and Disposition of Permanent Improvements.**

- (a) If Permanent improvements are to be constructed by the Lessee in the leased premises, the Agricultural Lease must specify who will own any Permanent improvements the Lessee constructs during the Lease term and may specify under what conditions, if any, Permanent improvements the Lessee constructs may be conveyed to the Tribe during the lease

term. In addition, the Lease must indicate whether each specific Permanent improvement the Lessee constructs will fall under one of the following scenarios:

- (1) Remain on the leased premises upon the expiration, Cancellation, or Termination of the Lease, in a condition satisfactory to the Tribe, and become the property of the Tribe;
  - (2) Be removed from the leased premises within a time period specified in the Lease, at the Lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the Permanent improvements; or
  - (3) Be disposed of by other specified means.
- (b) A Lease that requires the Lessee to remove the Permanent improvements from the leased premises must also provide the Tribe with an option to take possession of and title to the Permanent improvements if the improvements are not removed within the specified time period.

810. **Special Requirements and Provisions for Leases.**

- (a) **No Preferential Right to Future Leases.** No Lease made pursuant to this Chapter shall provide the Lessee a preference right to future Leases, except as to a tribal entity wholly owned by the Tribe.
- (b) **Arrangements for Payment of Rent.** Rent shall be paid to Lessor. The Lease shall contain provisions identifying the dates rents shall become due and payable. Except with the approval of the Tribal Council, no lease shall provide for payment of rent in advance of the beginning of the annual use period for which such rent is paid. Leases made pursuant to this Chapter shall contain provisions for the payment of rentals to an account identified by the Tribal Council or as otherwise specified by Lessor and requiring Lessee to maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States.
- (c) **Drainage or Irrigation Charges; Other Fees, Taxes, and Assessments.** Any Lease covering lands within an irrigation project or drainage district shall require the Lessee to pay annually on or before the due date all applicable drainage and irrigation charges assessed against such lands. The Lessee may be required to pay applicable fees, taxes, and assessments, if any, associated with the use of the leased premises. Such charges shall be in addition to the rental payments prescribed in the Lease.



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

812. **Subleases.** With the consent of the Tribe, the Lease may contain a provision authorizing the Lessee to sublease the premises, in whole or in part with the prior written approval of the Tribe through the Tribal Council. Subleases so made shall not serve to relieve the original Lessee from any liability nor diminish any supervisory authority of the Tribe provided under the approved Lease.

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

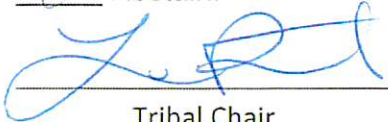
814. **Assignments.** An Assignment of any Agricultural Lease may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

815. **Amendments.** An amendment of any Agricultural Lease may be made only with the prior written approval of the Tribe through the Tribal Council and the written consent of all parties to the Lease.

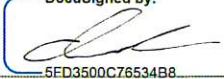
816. **Effective Date.** In addition to a Lease, any Lease Amendment, Assignment, Sublease, and encumbrance must also state an effective date and include a severability provision whereby in the event any provision in the leasing instrument is found to be invalid by a court of competent jurisdiction, the remaining provisions will remain valid and in force so long as the original intention of the leasing instrument remains.

CERTIFICATION

We, the undersigned officials of the Santa Rosa Band of Cahuilla Indians, do hereby certify that the foregoing leasing regulations were adopted at a duly called meeting held on October 8, 2021 with a quorum present by a vote of 5 For, 0 Against, 0 Abstain.



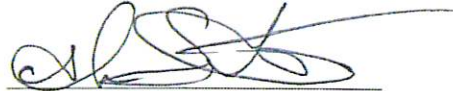
Tribal Chair

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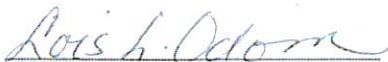
Tribal Secretary



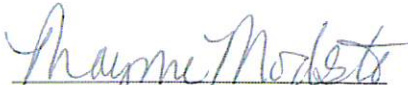
Tribal Vice-Chair



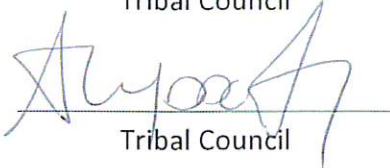
Tribal Treasurer



Tribal Council



Tribal Council



Tribal Council