



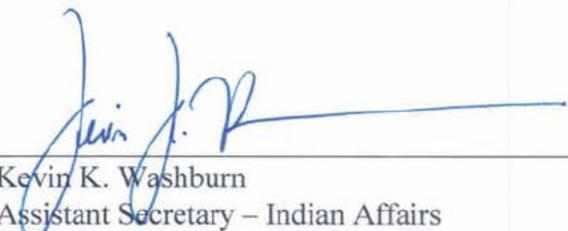
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPROVAL OF

[REDACTED]
BUSINESS LEASING REGULATIONS

The attached Business Leasing Regulations, submitted by the [REDACTED] prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of 17 pages and adopted by the [REDACTED] [REDACTED] on [REDACTED] as amended on [REDACTED] are hereby approved.

Dated: [REDACTED]


Kevin K. Washburn
Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

[REDACTED]

BUSINESS LEASING REGULATIONS

Adopted by the [REDACTED]

AUTHORITY:

The *Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act of 2012)*, 25 U.S.C. §415, Public Law 112-151, July 30, 2012, authorizes the [REDACTED] to develop regulations and issue leases without the approval of the Secretary, provided such regulations are consistent with all Secretary regulations and provide an environmental review process in accordance with the Act. According to the *Congressional Report*, the tribal regulations need not be identical to the Secretary's but may reflect the Nation's special needs and circumstances.

The [REDACTED] is authorized to promulgate business site leasing regulations for the Nation's business site leasing program. These regulations, in the form of a tribal ordinance, satisfy the tribal statutory requirements and thus are *tribal* regulations.

Subchapter 100. General Provisions

§ 101. Purpose and Applicability

- A. The purposes of these regulations are to:
1. Recognize the authority of the [REDACTED] to issue business site leases, and establish streamlined procedures for environmental review, approval, management and enforcement of leases;
 2. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the [REDACTED];
 3. Implement the *HEARTH Act of 2012*; and
 4. Implement the [REDACTED] *Business Leasing Regulations*.
- B. The [REDACTED] *Business Site Leasing Regulations* mandates certain provisions to protect and preserve [REDACTED] Trust Land, provisions for trust asset accounting, provisions for record keeping, and title recording, and provisions for modern leasing practices. Accordingly, *Subchapter 400* of these regulations set forth the business site leasing management system.

§ 102. Title

The regulations shall be referred to as the [REDACTED] *Business Leasing Regulations*.

§ 103. Definitions

- A. For purpose of these regulations:

1. **Assignment** means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all the lessee's obligations under a business site lease.
2. **Approving Entity** means the governmental entity that has statutory authority to perform the duties and responsibilities of the Lessor on behalf of the [REDACTED] and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases and lease terminations. The [REDACTED] *Business Site Leasing Regulations* give the Tribal Executive Committee of the [REDACTED] the power to act in the capacity of the Approving Entity.
3. **Best Interest of the [REDACTED]** means the balancing interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of [REDACTED] Trust Land, increasing employment and jobs on the trust lands of the [REDACTED] and preserving the sovereignty of the [REDACTED].
4. **Bond** means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or by a third-party surety.
5. **BIA** means the Bureau of Indian Affairs, United States Department of the Interior.
6. **Business Site Lease** means any lease for a business purpose issued upon [REDACTED] Trust Land under the authority of 25 U.S.C. §415.
7. **Change in Land Use** means the change from commercial to industrial, or one commercial or industrial to another use that significantly differs from the former use.
8. [REDACTED] means the [REDACTED].
9. [REDACTED] **Environmental Review** ([REDACTED]) comprises all of the documents relevant to the Environmental Review Process for a specific Leasing Decision. The Record is maintained by the Environmental Reviewer, and will be provided to the Approving Entity.
10. [REDACTED] **Law** means the body of Tribal law governing the land and activities occurring within the jurisdiction of the [REDACTED].
11. [REDACTED] **Trust Land** means the surface estate of land or any interest therein held by the United States in trust for the [REDACTED]; land held by the [REDACTED] and subject to federal restrictions against alienation or encumbrance, and reserved for federal purposes; and land held by the United States in trust for [REDACTED] corporation chartered under the *Indian Reorganization Act*.

12. **Development Period** means the time period from when a lease is executed to when improvements are expected to be substantially completed.
13. **Tribal Executive Committee of the [REDACTED]** means the Tribal Chairman, Tribal Vice-Chairman and the Tribal Treasurer granted the statutory authority to give final approval for all business site leases subject to confirmation by the [REDACTED] Tribal Legislature during the next regularly scheduled quarterly meeting of the Tribal Legislature to take place not less than thirty days, nor more than one hundred thirty days, after presentation to the Legislature for confirmation.
14. **Environmental Reviewer** is the employee of the [REDACTED] Department of Environmental Services that has the authority set forth in §710.
15. **Equity** means value of a business or a property, over and above the indebtedness against it, and includes tangible and intangible assets, including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure, and equipment.
16. **Executing Official** means the Chairman of the [REDACTED] or his designee, if properly designated, who shall have the authority to execute all business site leases on the trust lands of the [REDACTED] and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases subject to confirmation as described above.
17. **Fair Annual Lease Value** means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:
- a. Lessee and lessor are typically motivated;
 - b. Both parties are well-informed or well-advised, and acting in what they consider their best interests;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and
 - e. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

Fair annual lease value may take into consideration all revenues (such as taxes, fees and other benefits of value) which the lease is likely to generate for the

benefit of the [REDACTED] including increased business opportunities for related industries.

18. **Human Environment** means the connection between the people and their environment.
19. **Interested party** means a person whose interest is adversely impacted by the Managing Entity's leasing decision.
20. **Lease** means a written agreement or contract between the Lessor and a Lessee wherein the lessee is granted a right to possess [REDACTED] Trust Land for a specific purpose and duration. The written contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.
21. **Leasing Decision** in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Approving Entity: lease issuance, lease amendment or modification, subleasing, lease assignment.
22. **Lessee** means a person or entity to whom property ([REDACTED] Trust Land) is leased under a Lease. One who has the right to use or occupy a property under a lease agreement, e.g., the leaseholder or tenant.
23. **Lessor** means the [REDACTED]
24. **Managing Entity** means the Chairman of the [REDACTED], or his designee, having the statutory authority to manage all business site leases, in accordance with an approved business site leasing management plan.
25. **Mortgage** means a written *instrument* that creates a *lien* upon the leasehold interest of real estate encumbered in a business site lease as *security* for the payment of a specified debt.
26. **Permit** means a written agreement between the [REDACTED] and the applicant for the permit, also referred to as a *permittee*, whereby the permittee is granted a revocable use privilege to use [REDACTED] Trust Land for a specified purpose.
27. **Secretary** means the Secretary of Interior, U.S. Department of Interior, or his authorized representative.
28. **Sublease** means a written agreement by which the lessee grants a person or entity a right of possession no greater than that held by the lessee under a business site lease, subject to the approval of the *Executing Official* and confirmation of the [REDACTED]
29. **Surety** means one who guarantees the performance of another.

§ 104. Scope

These regulations apply to all actions taken subsequent to enactment of these regulations regarding private business site leases approved or modified under the authority of 25

U.S.C. § 415, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

Business site leases are mandatory for all private businesses operating from a permanent structure or fixed location, advertising itself as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by Tribal law. Failure to comply with this section shall be addressed pursuant to [REDACTED] law.

§ 105. Effective Date

These regulations shall take effect upon approval by the Secretary or his authorized designee.

§ 106. Approval

The lessor may issue a business site lease or permit, which is subject to approval from the Approving Entity and execution from the Executing Official, subject to the confirmation of the [REDACTED] Tribal Legislature, so long as the lease complies with these regulations, and is in the Best Interest of the [REDACTED].

§107. Choice of Law

All disputes over leases shall be resolved under the laws of the [REDACTED]. Nothing in these regulations shall be construed to waive the [REDACTED] sovereign immunity.

§ 108. Renewal

No lease shall be approved more than 12 months prior to the commencement of the term of the business site lease. The term of the lease shall not exceed 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The lessee shall notify the Managing Entity of the intent to renew, at least one year before the lease is due to expire.

Subchapter 200. Obtaining a Business Site Lease

§ 201. Information

Information on obtaining business site leases shall be available from the Chairman of the [REDACTED] or his designee.

§ 202. Supporting Documents

All applicants for business site leases shall submit the following documents to the Managing Entity: (1) financial statement; (2) site survey and legal description consistent with BIA standards, if applicable; (3) environmental review; and (4) other documents as may be required by the [REDACTED].

§ 203. Records

A. The Managing Entity shall record business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the United States Department of Interior, Bureau of Indian Affairs, Land Title and Records Office of competent jurisdiction.

B. The Managing Entity is responsible for disseminating recorded lease documents as follows:

1. [REDACTED] Executive Committee
2. [REDACTED] Tribal Legislature
3. [REDACTED] Office of Real Estate Services
4. [REDACTED] Accounting Department
5. The Lessee

C. A copy of these leases and all amendments and renewals shall also be sent to the Secretary of the Interior, Bureau of Indian Affairs.

§ 204. Ownership of Records

Records of activities taken pursuant to these regulations are the property of the [REDACTED]

Subchapter 300. Business Site Lease Requirements

§ 301. Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in the lease not inconsistent with [REDACTED] and Bureau of Indian Affairs regulations. The lease may be modified only in a manner consistent with Tribal and Federal regulations and with the approval of the Executive Committee of the [REDACTED]. The lessee is responsible for understanding these terms and conditions.

§ 302. Land Descriptions

Business site leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems or other means developed by the [REDACTED] which clearly indicates the parcel of land being leased, its size and location, as approved by the [REDACTED] Tribal Legislature.

§ 303. Appraisal, Local Studies

A. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Managing Entity utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every business site lease. Lease provisions regarding land use restrictions and non-competition agreements may be considered in assessing the fair annual lease value.

B. Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the *Uniform Standards of Professional Appraisal Practice* or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and the value of the trust land shall be attached to every business site lease.

§ 304. Environmental Review Process

The Approving Entity shall not approve a business site lease until the proposed business site lease has completed the [REDACTED] process. Leases approved and executed without compliance with this section shall be null and void.

§ 305. Fair Annual Lease Value

A. No lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

1. The lease is in the development period;
2. The Managing Entity is providing an incentive for business to locate on the [REDACTED], and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
3. The Managing Entity determines such action is in the Best Interest of the [REDACTED] and
4. The [REDACTED] Tribal Legislature is notified, in writing, of the discrepancy between the Fair Annual Lease Value and the actual annual lease amount along with a written justification for said discrepancy at the time of submission to the Tribal Legislature for confirmation of the lease.

B. A lease may be structured at a flat lease rate.

C. A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, mall or area set aside for business.

D. A lease may be structured based on a percentage of gross receipts or other market indicator.

E. The lease shall provide for periodic review at least every five years.

F. Leases for terms of less than five years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

G. Leases may be amended to allow for lease rate adjustments.

H. Leases may contain reasonable limitations on the adjustments of variable lease rates, provided those limitations are clear and unambiguous in the lease documents submitted to the Tribal Legislature for confirmation of the Lease.

I. Leases may provide reimbursement or other protection from adverse governmental actions that may be taken by the [REDACTED].

J. The Managing Entity shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

§ 306. Bond

A. The lessee shall obtain a satisfactory surety bond in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing:

1. The annual lease payment;
2. The estimated development cost of improvements; and
3. Any additional amount necessary to ensure compliance with the lease, applicable environmental standards, and the general protection of the health, safety and welfare of the [REDACTED].

B. The Managing Entity may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the [REDACTED]. The Managing Entity shall maintain written records of waivers and reductions.

§ 307. Insurance

The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent approved by the Managing Entity. It shall cover property business interruption, liability and casualty. The amount shall be sufficient to cover the improvements, personal injury or death, and reasonably foreseeable liabilities of the lessees, the [REDACTED], and the United States. The insurance shall expressly identify the lessor, the [REDACTED], and the United States as the insured parties.

§ 308. Improvements

A. Improvements to the premises shall become the property of the lessor unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal and restoration of site.

B. A lease may provide that the lessee may develop equity value in the improvements, and sell its interest in the lease based on the equity value, provided that all such sales shall be subject to the express written approval of the Tribal Chairman and confirmation of the Tribal Legislature. The lessor has a right of first refusal to purchase the interest.

C. A lease may provide that at expiration, cancellation or termination of the lease, the lessor shall purchase improvements to the premises at fair market value.

§ 309. Subleases, Assignments, Amendments and Encumbrances

A. Subleases, assignments, amendments or encumbrances of any lease shall be by written consent of the lessor and lessee, as well as the sureties, unless otherwise provided herein.

B. A lease may authorize subleases, in whole or in part, with the approval of the Tribal Chairman. This shall in no way relieve the parties from carrying out their duties under the lease.

C. A lease may authorize encumbrances to the leasehold interest for the purpose of financing the development and improvement of the premises with the express written approval of the Tribal Chairman and the Tribal Executive Committee. If a sale, foreclosure, or conveyance of the leasehold interest occurs and the lender is the purchaser, the lender may further assign the lease without approval of the Tribal Executive Committee or lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser of the leasehold interest is a party other than the lender, such transfer of the lease shall be subject to the approval of the Tribal Chairman and the Tribal Executive Committee and the purchaser of the leasehold interest must agree in writing to be bound by all terms and conditions of the lease.

Subchapter 400. Business Lease Management

§ 401. Management

A. The Managing Entity shall manage both existing business site leases, as well as those executed pursuant to these regulations.

B. The Managing Entity shall institute a business site leasing management plan that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

§ 402. Accounting

A. The Tribal Chairman shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and dates of when rate adjustments should be made.

B. The system shall include the following information: name of lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts cancellation efforts, balance due, cumulative payments and cumulative balance due.

C. The Managing Entity shall provide an annual accounting to the Treasurer of the [REDACTED].

Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

§ 403. Administrative Fees

The Managing Entity may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

Subchapter 500. Enforcement

§ 501. Enforcement

The Tribal Chairman shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business

site leasing management plans. This includes the power to enter the premises at a reasonable time, as may be defined in the lease, assess penalties, and assess late payments.

In addition to the express terms of a lease, failure to properly and timely pay all applicable tribal taxes, the unauthorized change in use, or the commission of a public nuisance shall serve as an event of default for all tribal business leases.

The Chairman of the [REDACTED] may direct the Tribal Attorney or the Tribal Prosecutor to assist in enforcement of leases and these regulations.

Nothing herein shall remove, or limit, the ability of the Bureau of Indian Affairs, at its discretion, to enforce the provisions of, or cancel with cause, a lease granted under these regulations.

§ 502. Defaults

A. If the Managing Entity determines the lessee is in default, the Managing Entity shall send the lessee a notice of default. The notice of default may be provided by certified mail, return receipt requested.

B. Within 10 days of the mailing, the lessee shall:

1. Cure the default and notify the Managing Entity in writing that the default has been cured.
2. Dispute the Managing Entity's determination that the lease is in default and explain why the lease should not be canceled; or
3. Request additional time to cure the default.

§ 503. Remedies

A. If the lessee fails to cure the default within the prescribed period, the Managing Entity may:

1. Cancel the lease pursuant to these regulations;
2. Grant an extension of time to cure the default;
3. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
4. Pursue any combination of remedies listed above; or
5. Pursue any other remedy set forth in the business site lease management plan.

B. If the Tribal Chairman cancels a lease pursuant to these regulations, the Chairman shall send the lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

1. Explain the grounds for cancelation;

2. Notify the lessee of unpaid amounts, interest charges or late payment penalties due under the lease;
3. Notify the lessee of its right to appeal; and
4. Order the lessee to vacate the premises within 30 days of the Lessee's receipt of the cancellation letter, if the lessee has not filed an appeal within 10 days of the receipt of said notice of cancellation.

C. A cancellation shall become effective 31 days after mailing. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

D. If the Managing Entity decides to grant an extension of time to cure a default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

§ 504. Penalties

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

§ 505. Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Managing Entity may take appropriate emergency action, which includes securing judicial relief.

§ 506. Holdover

If a lessee remains in possession after the expiration of a lease, or the termination of a lease and the conclusion of associated appeals, the Tribal Chairman shall treat such occupation as a trespass. The Tribal Chairman shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to tribal laws, or the Tribal Chairman may request assistance from the BIA for resolution under federal laws; such request shall be in writing by certified mail.

§ 507. Trespass

If a person occupies the premises without the Managing Entity's approval, the Managing Entity may pursue appropriate remedies, including the filing of a trespass action to regain possession under [REDACTED] law.

Subchapter 600. Appeals

§ 601. Appeals

A. The lessee or interested party may appeal a decision to terminate a lease by the Managing Entity, within ten days of the notice of determination. Appeals may be filed with the [REDACTED] Tribal Court. Such appeals shall be effectuated by: the

filing of an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

B. An appeal bond shall protect the party whose remedy has been stayed from all financial losses that may occur as result of the appeal. Appeal bond requirements shall not be separately appealed, but may be contested during the cancellation appeal.

C. The Tribal Court shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise not in accordance with the law.

D. These regulations are not intended to create an individual right to appeal tribal decisions resulting in the Nation declining to enter into a lease with individuals or entities seeking the use of tribal lands. There shall be no individual right to the use of tribal lands prior to the Nation entering into an approved Lease as provided by these regulations or Federal law.

§ 602. Appeals to the [REDACTED] Supreme Court

Decisions of the District Court may be appealed to the [REDACTED] Supreme Court. Review shall be limited to issues of law and the record. *De novo* review is not allowed.

Subchapter 700 Environmental Review Process

§ 701. Threshold Determination

Lessee Not Subject to Environmental Review Process (ERP): If the Environmental Reviewer determines that the Leasing Decision does not and will not affect the biological and natural resources of the [REDACTED] under any reasonable standard of review, the Leasing Decision is exempt from additional requirements of the Environment Review Process, subject to the environmental record requirements of §709.

Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural resources of the Nation, the lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

§ 702. Action on Leasing Decision Subject to Completion of ERP

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Entity may not consider the Leasing Decision until the Environmental Reviewer closes the ERP in accordance with §711.

§ 703. Lessee Responsible for Environmental Compliance

A. The lessee, as the entity that will occupy and operate a business on the leased land is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, lessee must provide to the Environmental Reviewer with respect to each of the environmental laws listed below, if applicable, a Compliance Determination for the Leasing Decision including, but not limited to:

1. Cultural Heritage and Historic
2. Floodplain Management
3. Wetlands Protection
4. Endangered Species Act
5. Air Quality
6. Water Quality
7. Sole Source Aquifer
8. Abandoned Mine Lands
9. ██████████'s Solid Waste Act
10. Farmland Protection Policy Act
11. Noise Abatement and Control
12. Toxic or Hazardous Substances and Radioactive Materials

B. The lessee's responsibility to comply with these laws is in addition to and separate from its obligations under this Subchapter and lessee's compliance obligations under those laws are not extinguished upon complying with the ERP.

C. The lessee's obligation to provide the Environmental Reviewer with Compliance Determinations is not complete until the Environmental Reviewer, in accordance with § 706, has determined that the lessee has completed the Compliance Determination process.

§ 704. Compliance Determinations

A. The lessee may request a Compliance Determination from the appropriate ██████████ Department as determined by the Environmental Reviewer in accordance with § 712. and for providing that department with the information it requires to make the Compliance Determination.

B. The Compliance Determination must clearly describe the Leasing Decision under consideration and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the lessee requests a Compliance Determination.

C. The Compliance Determination must also include a finding by the relevant department of the [REDACTED] as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

D. The completion of the Compliance Determination will be timely if the Environmental Reviewer receives the Compliance Determination within 20 working days after the later of two events: 1) the [REDACTED]'s departmental receipt of the lessee's request for a Compliance Determination; or 2) the [REDACTED]'s departmental receipt of all of the information it requires to complete the Compliance Determination.

E. If the Environmental Reviewer does not receive a completed Compliance Determination in a timely manner from a [REDACTED] department, the Environmental Reviewer may conclude the ERP without that department's Determination, provided the Environmental Reviewer documents the following conditions:

1. The Environmental Reviewer has made reasonable efforts to obtain the Compliance Determination from the [REDACTED] department; and
2. Delay is not the fault of the Lessee.

§ 705. Compliance Determinations in Earlier or Concurrent Environmental Review Documents

A. If the Leasing Decision pertains to an existing lease that has undergone an environmental review pursuant to the Nation's Business Site Leasing Regulations or the National Environmental Policy Act (NEPA) the lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.

B. As early in the process as possible, the Environmental Reviewer should review the earlier environmental review documents and assess whether the Compliance Determinations in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not evaluated in the Compliance Documents, the lessee must obtain a compliance update or amendment from the [REDACTED] department that has regulatory responsibility for the relevant resource.

C. In the event a Federal agency requires the lessee to conduct an environmental review under NEPA in connection with a Federal decision that is related to the Leasing Decision, the Environmental Reviewer may use those NEPA documents provided the documents meet the requirements of this Subchapter.

§ 706. Determination That Lessee Has Completed Compliance Determination Process

A. Before the Environmental Reviewer may close the ERP, he or she must affirmatively find the following:

1. The lessee has fully complied with the requirements of § 703 and § 704.
2. The lessee has submitted all Compliance Determinations required by this Subchapter; and
3. The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.
4. Public comments have been requested and considered in a manner consistent with § 708.

B. Upon making these findings, the Environmental Reviewer will place in the Environmental Review Record a statement to the effect the lessee has completed the Compliance Determination process.

§ 707. Compliance Determination

A. After the Environmental Reviewer certifies that the lessee has completed the Compliance Determination process, the Environmental Reviewer will prepare a summary of the compliance findings. The summary will contain the following information:

1. The date of the Compliance Determination, and the identification of the source of the Compliance Determination if contained in an earlier environmental review;
2. A summary of the government department's compliance determination for each law, including conditions of compliance, if any; and
3. A copy of the Compliance Determination.

B. The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the Environmental Review Record.

§ 708. Public Notice Requirements

The Environmental Reviewer shall publish in a general circulation newspaper a notice of the Nation's intent to certify that a lessee has completed the environmental review process of the Nation's business site leasing program.

The Notice must provide for a comment period, and state that public comments timely received will be considered before the Environmental Reviewer closes the ERP. The Notice will also provide information about the Environmental Review Record as well as when and where it may be reviewed.

§ 709. Environmental Review Record

A. An Environmental Review Record (ERR) must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the

Environmental Reviewer finds to be exempt pursuant to §701. The ERR must be maintained in a written format and be available for public review.

B. The ERR must contain all documents relevant to the Environmental Review Process, including but not limited to, the following:

1. Determinations (in writing) made by Environmental Reviewer pursuant to this Subchapter;
2. Correspondence with the lessee and government agencies;
3. Compliance Determinations including source documents and supporting documents;
4. The Compliance Determination Summary;
5. Public notices;
6. Public comments, if applicable;
7. Responses to relevant and substantive public comments. (For consideration of public comment, the “public” shall be defined as “all members of the [REDACTED]” (unless, or until, such time as the Bureau of Indian Affairs or other Federal agent of competent jurisdiction determines otherwise).

§ 710. Environmental Reviewer’s Authorities and Duties

A. The Environmental Reviewer will maintain the ERR in which all documents relevant to the Environmental Review Process for a particular Leasing Decision will be kept.

B. The Environmental Reviewer has the authority to carry out all the acts that are committed to his or her discretion in this Subpart.

C. The Environmental Reviewer may act as lessee’s agent for the purposes of assisting the lessee in completing the requirements of this Subchapter.

§ 711. Environmental Reviewer’s Closure Procedures

Upon determining the following the Environmental Reviewer will conclude the Environmental Review Process, whereupon the Environmental Reviewer will transfer the ERR to the Approving Entity:

- A. The ERR contains all documents required by § 709;
- B. The public comment period has passed, if applicable;
- C. The review process has been completed pursuant to tribal and federal law; and
- D. The lessee has complied with all requirements of this Subchapter.

§ 712. Environmental Reviewer Required to Consult with [REDACTED] Departments

A. Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant [REDACTED] departments, and determine which

department will be responsible for making the compliance finding referenced in § 704 for each of the environmental laws referenced in § 703.

B. The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The Environmental Reviewer is required to consult with the relevant [REDACTED] departments in the development and implementation of any such procedures.

Subchapter 800. Amendments; Severability

§ 801. Amendments

The [REDACTED] Tribal Legislature may amend these tribal regulations without the Secretary's approval, so long as the amendment is for clarification or administrative convenience, and is consistent with federal and tribal law.

§ 802. Severability

If the [REDACTED]'s court of competent jurisdiction determines a provision in these regulations or a lease is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

[REDACTED]