



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

**APPROVAL OF**

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

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The attached Amended Business Leasing Ordinance, submitted by the Confederated Tribes of the Warm Springs Reservation (listed in the Federal Register, Vol. 89, No. 5 FR 945 (January 8, 2024) as the Confederated Tribes of the Warm Springs Reservation of Oregon), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, consisting of 22 pages and adopted by the Warm Springs Tribal Council on February 20, 2024, is hereby approved.

Dated: May 2, 2024

  
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Assistant Secretary – Indian Affairs  
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

**WARM SPRINGS TRIBAL CODE**

**CHAPTER 413**

**COMMERCIAL LEASING**

**ORDINANCE NO. 98**

**WARM SPRINGS TRIBAL CODE  
CHAPTER 413<sup>1</sup>  
COMMERCIAL LEASING  
ORDINANCE NO. 98**

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<sup>1</sup> WSTC Chapter 413 was amended and restated on DATE, 2024, by Tribal Council Resolution ##,###.

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**WARM SPRINGS TRIBAL CODE  
CHAPTER 413  
COMMERCIAL LEASING  
ORDINANCE NO. 98**

**1. GENERAL**

**413.100 Authority and Delegation, Applicable Law.**

(a) Ordinance No. 98 is enacted by the Tribal Council pursuant to Article V, Section 1(a), (l), (n) and (u) of the tribal Constitution and By-Laws of the Confederated Tribes of the Warm Springs Reservation of Oregon.

(b) The Tribe hereby authorizes and delegates to the Tribal Council and any tribal department or office that the Tribal Council may designate (“Authority”) the power and authority to lease any real property of the Tribe or lease space within existing facilities on tribal land that is not already leased in accordance with federal law and this Chapter. The Authority hereby includes (i) for Lease terms of five (5) years or less under this Chapter, the Secretary-Treasurer’s office, and (ii) any other tribal department or office to which the Tribal Council has by resolution appointed as an Authority. The Authority shall have the statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Tribe, and to approve or disapprove leasing transactions, which include but are not limited to: Lease approval and issuance, bonding, Lease amendment or modification, subleasing, Lease assignment or transfer, tenant Leases and Lease terminations.

(c) Business Leases and Renewable Energy Resource Leases are subject to applicable tribal and federal laws.

**413.105 Scope.**

(a) The scope of application of this Chapter shall be limited to all Leases approved pursuant to this Chapter and the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”), Pub. L. No. 112-151, 126 Stat. 1150 (2012) (25 USC 415(h)), governing Business Leases and Renewable Energy Leases (defined below) on Tribal Trust or Restricted Land (defined below) and to all actions and decisions taken in connection with those Leases.

(b) Nothing herein shall be construed to affect the terms and conditions of existing Leases approved prior to the effective date of this Chapter or to Leases approved by the Secretary of the Interior pursuant to 25 C.F.R. part 162.

(c) This Chapter shall not apply to: (i) Leases of individually owned Indian allotted land or land held in unrestricted fee status; (ii) Leases for residential purposes and (iii) Leases of mineral interests.

**413.110 Purpose.** The purposes of this Chapter are to:

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

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

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

**413.115 Short Title.** This Chapter shall be known and cited as the "Commercial Leasing Chapter."

## 2. DEFINITIONS

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

(a) "**Assignment**" means an agreement between a Lessee and an assignee whereby the assignee acquires all or some of the Lessee's rights and assumes all or some of the Lessee's obligations under a Lease.

(b) [Reserved.]

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

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

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

(f) "**Change in Land Use**" means the change from one use to another that significantly differs from the former use.

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

(h) "**Environmental Review Process**" means the process for conducting tribal environmental review to assess whether a proposed development or project as defined under applicable Tribal law or regulations will have a positive or negative environmental impact, including but not limited to Ordinance 74, the Integrated Resources Management Plan as

reviewed and noted by the BIA in accordance with the Constitution and Bylaws of the CTWS which contains an interdisciplinary and comprehensive impact review for activities that may impact the environment and imposes conditions and best management practices and which incorporates measures intended to comply with sensitive species and archaeological and historical resource protection and management.

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

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

(k) **“Fair Annual Lease Value”** means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified Lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the Lessee and Lessor each acting prudently and knowledgably, 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:

(i) Lessee and Lessor are typically motivated;

(ii) Both parties are well-informed or well-advised, and acting in what they consider their best interests;

(iii) A reasonable time is allowed for exposure in the open market; and

(iv) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the Business Lease contract; and the rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

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

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

(n) **“Leasehold Mortgage”** means a mortgage, deed of trust, or other instrument that pledges a Lessee’s leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

(o) **“Leasing Decision”** in the context of the Environmental Review Process means the following type of Lease transactions that will be acted on by the Lessor: Lease



approval and issuance, Lease amendment or modification, subleasing, Lease assignment or transfer and tenant Leases.

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

(q) **“Lessor”** means the Tribe.

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

(s) **“Public”** means the persons and agencies who can demonstrate a definable, concrete interest that may reasonably be affected by a proposed Lease for purposes of the Environmental Review Process.

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

(u) **“Renewable Energy Resource Lease”** means a lease that authorizes 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, solar, biomass, and/or hydrologic energy resources to generate and supply electricity: (i) for resale on a for-profit or non-profit basis; (ii) to a utility grid serving the public generally; or (iii) to users within the local community. Renewable energy resource leases include, among others, Wind and Solar Resource Leases and Wind Energy Evaluation Leases.

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

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

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

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

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

(aa) [Reserved.]

(bb) **“Tribal Trust or Restricted Land”** means any land held in trust or restricted status for the sole benefit of the Tribe by the United States, and any land title to which is solely held by the Tribe and which is subject to federal restriction against alienation.



(cc) **“Wind and Solar Resource Lease (“WSR Lease”)**” means a Renewable Energy Resource Lease that authorizes possession of tribal land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated equipment, improvements and infrastructure, such as wind turbines, solar panels, battery storage and transmission, to harness wind and/or solar energy to generate, store and supply electricity.

(dd) **“Wind Energy Evaluation Lease (“WEEL”)**” means a short-term Renewable Energy Resource Lease that authorizes 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.

### 3. LEASE REQUIREMENTS

**413.300 Terms and Conditions.** Leases shall be governed by standard Lease terms and conditions approved by the Lessor. The standard terms and conditions may be modified only with the approval of the Lessor. The Lessee is responsible for understanding these terms and conditions.

**413.305 Duration and Renewal.** The Lease must provide for a definite term. If there is an option to renew or automatic renewal of the term, the Lease must specify: (i) a definite term for the option to renew; (ii) the time and manner in which the option must be exercised and any consents or approvals related to the same; (iii) that confirmation of the renewal will be submitted to the Lessor unless the Lease provides for automatic renewal; (iv) notice requirements to sureties and mortgagees and other required parties, and (v) additional consideration, if any, that will be due upon exercise of the option and/or renewal. The maximum term of a Business Lease or a WSR Lease may not exceed 75 years (consisting of an initial term up to 25 years and up to two renewal terms, each of which may not exceed 25 years each) and the maximum term of a WEEL may not exceed 6 years (consisting of an initial term of up to 3 years and one renewal option term up to 3 years). The Business Lease and WSR Lease term may include provisions for development, construction and operational terms.

**413.310 Obtaining a Lease.** Information on obtaining a Lease shall be available from the Lessor.

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

(i) Financial statement.

(ii) Site survey and legal description, if applicable.

(iii) Tribal environmental review where required.

(iv) Other documents as may be required by the Lessor and pursuant to the Lessor’s Leasing procedures.

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

(i) A description of the tract, location, or parcel of the land being leased with sufficient detail to meet the recording requirements of the LTRO.

(ii) The purpose of the Lease and authorized uses of the leased premises, which may not include exploration, development, or extraction of any mineral resources. The Lease may allow use of the leased premises for other uses compatible with the purpose of the Lease and consistent with the terms of the Lease.

(iii) The parties to the Lease.

(iv) The term of the Lease.

(v) The date on which the Lease is effective.

(vi) Identification of the responsible party for evaluating suitability, negotiating operating and sale agreements, purchasing, installing, constructing, owning, operating, and maintaining any equipment, related facilities and improvements to the leased premises.

(vii) Unless the Lessee would be prohibited from law from doing so, the Lease must provide:

a. That the Lessee indemnifies the United States and the Tribe against all liabilities or costs relating to the use, handling treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term regardless of fault or caused by Lessee's activities under the Lease, 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; and

b. For indemnification of the United States and Lessor against any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises. The scope of the indemnification of Lessor may be negotiated in the Lessor's discretion; provided such negotiation does not modify or alter the scope or indemnity for the United States.

(viii) All requirements for rent and other compensation, as well as any requirements for late payments or interest, including the amount due, when it is due, to whom it must be paid, and the form of acceptable payments.

(ix) Due diligence, insurance and bonding requirements as provided in this Chapter.

(x) Whether a plan of development or any construction schedule is required pursuant to Section 413.350 of this Chapter.

(xi) What reports, surveys, site assessments, or other information is needed to facilitate compliance with applicable tribal law relating to environmental protection, cultural resource protection, and land use requirements.

(xii) If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, then the Lease must state the following: "If the leased premises are within an Indian irrigation project or drainage district, except as provided by 25 CFR 171, then Lessee must pay all operation and maintenance charges that accrue during the Lease term. The Lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district."

(xiii) Requirements for compliance with applicable law and with any other legal requirements that may be incorporated by reference.

(xiv) Prohibitions on creation of any nuisance, negligent use or waste of the leased premises.

(xv) 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 Lessor and the Tribal Historic Protection Office to determine how to proceed to appropriately address the discovery.

(xvi) Lessee's obligations to maintain records to demonstrate lease compliance and to cooperate with any requests by the Lessor to make appropriate records, reports or information available to the Lessor for inspection.

(xvii) The obligations of the Lessee and its sureties to the Lessor are also enforceable by the United States, so long as the land remains in trust or restricted status.

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

(d) The Lessor shall send copies of Leases and any Subleases, amendments, renewals, modifications and cancellations to the Northwest Regional Office for encoding and transmittal to the LTRO for recording. The current address, which may be subject to change and such be verified for each recording, is as follows:

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

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

(f) The Lessor shall send a copy of all Leases and any amendments and renewals to Leases to the Superintendent, Warm Springs Agency, Bureau of Indian Affairs, Box 1239, Warm Springs, OR 97761.

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

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

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

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

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

**413.325 Valuation: Local Studies.**

(a) The Fair Annual Lease Value shall be determined by a valuation or equivalent procedure performed by the Lessor utilizing the following data: improvement cost, replacement cost, earning capacity, sale and lease data of comparable sites, and other relevant information or by similar methodology as approved by the Lessor and deemed to be in the Best Interest of the Tribe. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Lease.

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

(c) The Lessor may waive valuation if compensation has been negotiated in an amount satisfactory to the Lessor and doing so is in the Best Interest of the Tribe.

**413.330 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:

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

(b) A Lease may provide for monetary or alternative forms of compensation, including but not limited to a flat lease rate, a flat lease rate plus a percentage of gross receipts, or based on a percentage of gross receipts, or based on a market indicator.

(c) A Lease may include various types of compensation at specific stages during the life of the Lease, e.g., annual payments during the Development Period, payments based on operations and bonuses.

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

(e) A Lease must specify to whom payments shall be made, e.g., directly to the Lessor or to the BIA. If a Lease allows for lease payments to be made directly to the Tribe, the Tribe must maintain documentation of the Lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the U.S.

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

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

(h) The Lessor 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.

**413.335 Environmental Review Process.** Unless exempted from this requirement under this Chapter, the Lessor shall not approve a Lease until the proposed Lessee has completed the Environmental Review Process under Section 8 of this Chapter. Leases approved and executed without complying with this section shall be null and void.

**413.340 Insurance.**

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

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

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

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

**413.345 Performance Bond.**

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

- (i) The annual Lease payment;
- (ii) The estimated development cost of improvements;
- (iii) Any additional amount necessary to ensure compliance with the Lease;
- (iv) The estimated cost to ensure removal of permanent improvements and restoration of the premises.

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

- (c) The performance bond may be in one of the following forms:
- (i) certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
  - (ii) irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
  - (iii) negotiable Treasury securities; or
  - (iv) surety bond issued by a company approved by the U.S. Department of the Treasury.



(d) Where a performance bond is required, the Lease shall set forth the conditions under which it may be adjusted to reflect changing conditions and shall require 60 days notification of any cancellation or substitution of the bond or security.

**413.350 Improvements.** All Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within the schedule specified in the Business Lease. The Lessor may waive the requirements of this Section, if doing so is in the Best Interest of the Tribe.

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

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

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

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

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

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

(e) Failure of the Lessee to comply with the requirements of this Section 413.350 will be deemed a violation of the Lease and may lead to cancellation of the Lease pursuant to Section 6 of this Chapter.

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

(g) A Lessee may develop equity value in the improvements consistent with the terms of the Lease and sell its interest in the Lease. Unless the Lease provides otherwise, the Lessor has a right of first refusal to purchase the interest.

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

(i) Improvements may be subject to taxation by the Tribe and a Lessee may be required to pay additional fees and assessments associated with the use of the land as determined by the entities having jurisdiction, except as provided in applicable federal laws, including but not limited to 25 CFR 162.017.



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

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

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

(c) A Lease may authorize Subleases and assignments to sub-lessees or assignees, including but not limited to leasehold mortgagees or their designees who acquire the lease either through foreclosure or by conveyance, in whole or in part, without approval from the Lessor and execution from the Executing Official, provided a copy of the Sublease or assignment is provided to the Lessor and the following conditions, where applicable, are met and stated in the Lease:

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

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

(iii) The proposed assignee or sub-lessee submits a current financial statement or other document showing financial adequacy;

(iv) Mortgagees or sureties, if any, have consented if such consent is required; and

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

This Section 413.355(c) in no way relieves the parties from carrying out their duties under the Lease, which may contain additional restrictions and conditions.

(d) The Lease may authorize encumbrances, including but not limited to a Leasehold Mortgage, for the purpose of financing to develop and improve the premises or for other purposes related to the purpose of the Lease. The Lease may provide that the ability to grant leasehold mortgages is subject to approval by the Lessor and execution from the Executing Official, or may provide that approval by the Lessor and execution from the Executing Official is not required, provided: (i) the Lessee provides notice to the Lessor of the proposed leasehold mortgage which includes information that demonstrates mortgagee or surety consent if required has been obtained, (ii) the Lease identifies what law would apply in the event of foreclosure, and (iii) the Lessor has not objected to the leasehold mortgage within the notice period.

(e) If a sale or foreclosure of the Lessee's business or assets occurs and the encumbrancer is also the purchaser, the encumbrancer may assign the Lease without approval of the Lessor or Lessee, provided the assignee 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, approval by the

Lessor and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all terms and conditions of the Lease.

#### 4. RENEWABLE ENERGY RESOURCE LEASES

**413.400 Applicability.** The terms of Section "3. LEASE REQUIREMENTS" will apply to all Renewable Energy Resource Leases, except where those terms differ from the terms in this Section 4, in which case the terms of this section govern the Renewable Energy Resource Lease.

**413.405 Applications for Leases.** A person applying for a Renewable Energy Resource Lease must submit their application to the Lessor in accordance with Section 413.310 of this Ordinance. The Lessor will be responsible for negotiating requests for Renewable Energy Resource Leases and, after completing the tribal environmental review process, for recommending whether the decision maker should approve or deny a Renewable Energy Resource Lease.

**413.410 Required Terms.** An application for a Renewable Energy Resource Lease must include, along with the terms specified in Section "3. LEASE REQUIREMENTS," the following terms:

(a) a provision identifying who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining renewable energy resource equipment; negotiating power purchase agreements; and transmission, and other due diligence requirements in accordance with any development plans;

(b) for a WEEL an initial term that is no longer than 3 years. If there is an option to renew the term, that renewal period may not be longer than 3 years. The option to renew must specify: (i) the time and manner in which the option must be exercised; (ii) that confirmation of the renewal will be submitted to the Lessor; and (iii) additional consideration, if any, that will be due upon exercise of the option;

(c) for a WEEL, a provision specifying ownership of any energy resource information the lessee obtains during the WEEL term

(d) for a WEEL, due diligence requirements that require the lessee to install testing and monitoring facilities within 12 months after the effective date of the WEEL, or, if installation does not occur, 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;

(e) for a WSR Lease, provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation, storage and delivery of electricity. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the Lease that describes the type and location of any permanent improvements the lessee plans to install and a schedule showing tentative commencement and completion dates for those improvements;

(f) for a WSR Lease, due diligence requirements that require the lessee to:

(i) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe in the resource development plan;

(ii) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (f)(i) of this section, provide the Lessor 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;

(iii) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and

(iv) 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);

(g) for a WSR Lease, if the parties agree to any of the following changes to the resource development plan after WSR Lease approval, the Lessee must submit the revised plan to the Lessor, including:

(i) Location of permanent improvements;

(ii) Type of permanent improvements; or

(iii) Delay of 90 days or more in any phase of development.

## **5. LEASE MANAGEMENT**

### **413.500 Management.**

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

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

**413.505 Administrative Fees.** The Lessor may charge administrative fees for costs associated with issuing a Lease, Sublease, assignment, amendment, mortgage or other administrative transaction.

## **6. ENFORCEMENT**

**413.600**      **Generally.** The Lessor shall have all powers necessary and proper to enforce the Lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments. A Lease may include enforcement language and nothing in this Section 6 is intended to modify enforcement procedures or rights otherwise set forth in the Lease, for example if the Lease contains specific Mortgage Protection provisions. Nothing in this Chapter prohibits Lessor from requesting the Secretary to enforce the terms and conditions of, or cancel, any Lease.

**413.605**      **Defaults.**

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

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

(i)      Cure the default and notify the Lessor in writing that the default has been cured;

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

(iii)    Request additional time to cure the default.

**413.610**      **Remedies.**

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

(i)      Cancel the Lease pursuant to these regulations;

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

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

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

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

(b)      If the Lessor cancels a Lease, the Lessor 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:

(i)      Explain the grounds for cancellation;

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

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

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

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

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

**413.615 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 Lessor, and the failure to pay such amount shall be treated as a breach of the Lease.

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

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

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

## 7. APPEALS

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

**413.705 Scope of Review.** The Tribal Council or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law. The decision of



the Tribal Council or other hearing body shall be final. Nothing in this Section is intended to modify dispute resolution procedures otherwise set forth in the Lease; for example, if a Lease provides for binding arbitration, then the provisions of this Section shall not apply unless the terms of the Lease permit recourse under this Section.

## **8. ENVIRONMENTAL REVIEW PROCESS**

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

### **413.805**      **Threshold Determination.**

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

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

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

### **413.815**      **Environmental Review Process.**

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

the Environment which the Lease is likely to have, and shall include a detailed statement setting forth all of the following:

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

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

(iii) In a separate section:

a. Any Significant Effect on the Environment that cannot be avoided if the Lease is executed; and

b. Any Significant Effect on the Environment that would be irreversible if the Lease is executed.

c. Any mitigation measures proposed, recommended, or required.

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

#### **413.820 Notice of Completion of Draft Assessment.**

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

(i) A brief description of the Project;

(ii) The proposed location of the Project;

(iii) An address where copies of the draft Assessment are available; and

(iv) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft Assessment.

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



(i) Publication of the Tribe's draft Assessment in a newspaper of general circulation in the area affected by the proposed Lease, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(ii) Posting of the Tribe's draft Assessment in the offices of the Tribe and the Authority with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

(iii) Publication of the Tribe's draft Assessment on the Tribe's official website, with notice to the Public of the opportunity to comment on any Significant Effect on the Environment of the proposed action.

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

## **9. SOVEREIGN IMMUNITY**

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

## **10. EFFECTIVE DATE; AMENDMENT**

**413.1000 Effective Date.** This Chapter shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior.

**413.1005 Amendment.** This Chapter may be amended by the Tribal Council. All substantive amendments to this Chapter must be submitted to and approved by the Secretary of the Interior.

**413.1010 Severability.** If any provision of this Chapter shall be held unconstitutional or invalid, only the invalid provision or language shall be severed and the remaining provisions and language of this Chapter shall remain in full force and effect.