

COQUILLE INDIAN TRIBE
Chapter 330
BUSINESS SITE LEASING ORDINANCE

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330.010-General

1. General and Jurisdiction. This Ordinance is enacted by the Coquille Indian Tribal Council pursuant to the powers vested to it under Article VI of the Constitution of the Coquille Indian Tribe (the "Tribe").
2. Scope of Ordinance. The scope of application of this Ordinance shall be limited to Business Site Leases of Tribal Trust Land, reviewed and approved pursuant to this Ordinance except for those, if any, specifically excluded by Tribal law, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of leases in existence as of the date that this Ordinance is approved by the Secretary of the Interior.
3. Purpose- The purpose of this Ordinance is to:
 - (a) Recognize the Tribe's authority to enact and implement tribal regulations to issue, review, approve, and enforce Business Site Leases pursuant and in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"). Pub. L. No. 112-151, 126 Stat. 1150 (2012); and
 - (b) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Tribe.
4. Short Title-This Ordinance shall be known and cited as the "Business Site Leasing Ordinance."

330.020-Definitions

1. "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 the Lessee's obligations under a Business Site Lease.
2. "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, realize short and long term benefits to the Tribe and its members, and preserve the sovereignty of the Tribe.
3. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior.
4. "Business Site Lease(s)" means the same as "Lease."
5. "Change in Land Use" means the change from one use to another that significantly differs from the former use.
6. "Development Period" means the time period from when a lease is executed to when permanent improvements are expected to be substantially completed.
7. "Environmental Review Process" means the process to assess the environmental impact of a proposed Lease, Lease Amendment, Leasehold Mortgage or Assignment of a Lease involving Tribal Trust Land, as set forth in CITC 330.020(25).
8. "Executing Official" means the Tribal Chairperson or his or her properly authorized delegate, who shall execute all Business Site Lease of the Tribe and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

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9. "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; and
 - 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 the rental amount represents the normal consideration for the property leased, unaffected by special fees or concessions granted by anyone associated with the transaction.
10. "Holdover" means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires.
11. "LTRO" means the Land Title and Records Office of the BIA.
12. "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 business and commercial purpose for a specified duration. The Lessee's right to possess will limit the Lessor's right to possess the leased premises only to the extent provided in the Lease.
13. "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.
14. "Lessee" means a person or entity who has acquired a legal right to possess Tribal Trust Land by a lease pursuant to this Ordinance.
15. "Lessor" means the Tribe.
16. "Permanent Improvement" means an improvement that is intended to remain indefinitely and becomes an integral part of the land.
17. "Space Lease" means a Lease of space within existing facilities on Tribal Trust Land.
18. "Sublease" means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under a Business Site Lease.
19. "Tribe" means the Coquille Indian Tribe.
20. "Tribal Council" means the duly elected governing body of the Tribe pursuant to the Constitution of the Coquille Indian Tribe.
21. "Tribal Trust Land" means all lands owned by the Tribe over which the Tribe exercises governmental power and is held in Trust or Restricted Status.
22. "Trust or Restricted Status" means
 - a. That the United States holds title to the tract or interest in trust for the benefit of the Tribe or individual Indians; or
 - b. That one or more tribes holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitation in the conveyance instrument under Federal law or limitations in Federal law.

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330.030-Business Lease Requirements

1. Terms and Conditions- Lease terms and conditions may be modified only with the approval of the Tribe. The Lessee is responsible for understanding the Lease terms and conditions.

2. Approval Process- After all of the necessary requirements of this Ordinance have been met, a proposed Business Site Lease shall be presented to the Tribal Council for approval. A lease is approved by a majority vote of a quorum of the Tribal Council. The approved lease shall be effective upon execution by an Executing Official on behalf of the Tribe.

3. Duration and Renewal-:

- (a) Unless otherwise provided in the Lease no Lease shall be approved more than 12 months prior to the commencement of its term;
- (b) A Business Site Lease term shall not be more than 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; and
- (c) The Lessee shall notify the Tribe of the intent to renew, at least one year before such lease is due to expire; provided that this requirement may be waived by a majority vote of a quorum of the Tribal Council.

4. Obtaining a Business Site Lease. Persons seeking a Business Site Lease shall comply with the following requirements:

- (a) All applicants for a Business Site Lease shall submit the following documents to the Tribe:
 - (i) The proposed Lease;
 - (ii) Financial statements (audited, if available) for the previous year (if applicable) and for the current year to date;
 - (ii) Site survey and legal description, as required in this Ordinance;
 - (iii) Proof of completion of the Environmental Review Process, as required in this Ordinance;
 - (iv) Other documents as may be required by the Tribe or otherwise under this Ordinance;
 - (v) Development plans or construction schedules required by the Tribe; and
 - (vi) A restoration and reclamation plan, if required by the Tribe.
- (b) All Business Site Leases shall contain, at a minimum, the following provisions:
 - (i) The tract, location, or parcel of the land being leased, with a legal description sufficient to meet LTRO requirements;

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- (ii) The purpose of the lease and authorized uses of the leased premises;
- (iii) Identification of the parties to the lease;
- (iv) The term and effective date of the lease;
- (v) Identification of the responsible party for constructing, owning, operating, maintaining and removing any improvements to the leased premises;
- (vi) Indemnification of United States and Lessor;
- (vii) Payment requirements, including:
 - (A) The amount of payment;
 - (B) Interest and additional late payment penalties;
 - (C) Acceptable form(s) of payment;
 - (D) The dates on which all payments are due;
 - (E) The Lessee shall make payments directly to the Tribe; and
 - (F) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.
- (viii) Due diligence, insurance and bonding requirements as provided in this Section.
- (c) The Tribe shall record Business Site Leases, subleases, assignments, amendments, leasehold mortgages, renewals, modifications and cancellations with the BIA Northwest Regional Office (or alternative office designated by the BIA Northwest Regional Director) so that they may be presented to the appropriate LTRO for coding.
- (d) The Tribe is responsible for maintaining all records of all Business Site Leases and for disseminating recorded lease documents to the Tribal Council Secretary, the Tribal Natural Resources Department, and if required by the Tribal Council, to the Coquille Indian Housing Authority.
- (e) The Tribe shall send a copy of these leases and all amendments and renewals to

Regional Director
Northwest Regional Office
Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169
- (f) The Tribe shall send a copy of this Ordinance to the Regional Director-

Regional Director
Northwest Regional Office

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Bureau of Indian Affairs
911 Northeast 11th Avenue
Portland, Oregon 97232-4169

- (g) Records of activities taken pursuant to this Ordinance are the property of the Tribe. Records compiled, developed, or received by the Secretary of the Interior are the property of the United States.

5. Space Leases- Space leases shall be reviewed and approved pursuant to this Ordinance.

6. Land Descriptions- Business Site Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems. Space leases shall also 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.

7. Appraisal-Local Studies-

- (a) The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Tribe utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites or by similar methodology as approved by the Tribe and deemed to be in the best interest of the Tribe. An appraisal log reporting the methods of appraisal and value of the Tribal Trust Land shall be attached to every Business Site Lease.
- (b) Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust land shall be attached to every Business Site Lease.

8. 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 Tribe is providing an incentive for business to locate on Tribal Trust Land, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
 - (iii) The Tribal Council determines a lease is in the Best interest of the Tribe, and in this instance an appraisal shall not be necessary.
- (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.
- (d) A lease may be structured based on a percentage of gross receipts, or based on a market indicator.

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- (e) The lease may provide for periodic review and such review may give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.
- (f) Leases 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) The Tribe 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. The Tribe will also keep written records of its decision to dispense with Fair Annual Lease Value determinations when in the Best interest of the Tribe.

9. Environmental Review Process- Unless exempted under this Ordinance, the Tribe shall only approve a Business Site Lease that complies with the Environmental Review Process set forth in this Ordinance.

10. Insurance-

- (a) A Lessee shall provide insurance necessary to protect the interests of the Tribe 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 Site Lease.
- (c) The Tribe and the United States must be identified as additional insured parties on any insurance policy procured under this subsection.
- (d) The Tribe may waive this requirement if the Tribe determines it is in the Best interest of the Tribe. The waiver may be revoked at any time if the waiver ceases to be in the Tribe's best interest.

11. Performance Bond-

- (a) Unless waived in writing by the Tribe in accordance with this Ordinance, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure the contractual obligations of the lease. Such bond shall be for the purpose of securing the Lessee's contractual obligations under the Business Site Lease and shall guarantee:
 - (i) The annual lease payment;
 - (ii) The estimated development cost of improvements, if any; and
 - (iii) Any additional amount necessary to ensure compliance with the lease.
- (b) The Tribe may waive the bond requirement, or reduce the amount, if doing so is in the Best interest of the Tribe. The Tribe shall maintain written records of waivers and reductions.

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- (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 U.S. Treasury securities; or
 - (iv) A surety bond issued by a company approved by the U.S. Department of the Treasury.

12. Permanent Improvements-All Business Site Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any required improvements within the schedule specified in the Business Site Lease.

- (a) Lessee, at Lessee's expense or as otherwise provided in the Business Site Lease may construct improvements under a Business Site Lease if the lease specifies, or provides for the development of:
 - (i) A plan 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 Tribe with prompt 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 Tribe or otherwise required in the Business Site Lease, Lessee shall further provide the Tribe, in writing, an updated schedule for construction.
- (d) Failure of the Lessee to comply with the requirements of paragraphs (a) – (c) of this subsection will be deemed a violation of the Business Site Lease and may lead to cancellation of the Business Site lease pursuant to this Ordinance.
- (e) Improvements to the premises shall become the property of the Tribe unless otherwise provided for in the Business Site Lease. If improvements will be removed, the Business Site Lease shall specify, unless waived by the Tribe, the maximum time allowed for such removal, the Lessee's responsibility for such removal, and the Lessee's obligations to restore and reclaim the property to conditions acceptable to the Tribe.
- (f) A Lessee may develop equity value in the improvements, and, subject to the terms of this Ordinance and any lease, sell its interest in the Business Site Lease based on the equity value. The Tribe has a right of first refusal to purchase the interest.
- (g) The Business Site Lease may provide that at expiration, cancellation or termination of the Business Site Lease, the Lessor will purchase improvements to the premises at fair market value.

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

13. Subleases, Assignments, Amendments and Leasehold Mortgages-

- (a) Subleases, assignments, amendments or leasehold mortgages of any Business Site Lease shall be by written consent of the Tribe and Lessee, unless otherwise provided herein.
- (b) The Business Site Lease may authorize subleases and assignments, in whole or in part, without approval from the Tribe and execution from the Executing Official, provided that a copy of the sublease or assignment is provided to the Tribe and the following conditions, where applicable, are met and stated in the Business Site Lease:
 - (i) There is no event of default under the Business Site Lease or this Ordinance;
 - (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 sublessee demonstrates, to the satisfaction of the Lessee and the Tribe, its financial adequacy to perform the terms of the lease; and
 - (iv) The Lessee shall not be relieved or released from any of its obligations under the Business Site Lease.

This Section 13(b) in no way relieves the parties from carrying out their duties under the Business Site Lease, which may contain additional restrictions and conditions.

- (c) The lease may authorize mortgages of the leasehold interest subject to approval by the Tribe and execution from the Executing Official.
- (d) Subject to the terms of the Lease, if a sale or foreclosure of the Lessee's business or assets occurs and the leasehold mortgagee is also the purchaser, the leasehold mortgagee may assign the lease without approval of the Tribe or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. All other provisions of CITC 330.030(13) shall continue to apply to the Lessee and the assignee. If the purchaser is a party other than the leasehold mortgagee, approval by the Tribe 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.

330.040-Business Lease Management

1. Management-

- (a) Except where required otherwise by agreement or applicable law, the Tribe or its agent shall manage all Business Site Leases pursuant to this Ordinance.

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- (b) The Tribe may institute a business site leasing management plan or policy that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies, consistent with the provisions of this Ordinance.

2. Administrative Fees-The Tribe may charge a lessee, leasehold mortgagee or other party administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, leasehold mortgage or other administrative transaction.

330.050-Enforcement

1. Generally- The Tribe shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with this Ordinance. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

2. BIA Enforcement – Consistent with Federal law, the BIA may, upon reasonable notice from the Tribe and at BIA’s discretion, enforce the provisions of or cancel a Lease document.

3. Applicable Law- Except where otherwise required by agreement or applicable law, the Tribe shall manage all leases pursuant to this Ordinance. The law that will apply to all leases authorized under this Ordinance will be, in the following order: Tribal law (including but not limited to this Ordinance) and federal law, and Tribal law. Oregon state law may be referenced for guidance on any matters not addressed in Federal or Tribal laws.

4. Defaults-

- (a) If the Tribe determines the Lessee is in default, the Tribe will send the Lessee a notice of default within five (5) business days of the determination, provided that a delay in sending this notice shall not prejudice or affect the Tribe’s rights under this Ordinance. The notice of default shall be provided by certified mail, return receipt requested.
- (b) Within 10 days of the receipt of mailing, the Lessee shall:
 - (i) Cure the default and notify the Tribe in writing that the default has been cured.
 - (ii) Dispute the Tribe's determination that the lease is in default and explain why the lease should not be canceled; or
 - (iii) Request additional time to cure the default.

5. Remedies-

- (a) If the Lessee fails to secure the default within the prescribed period, the Tribe may:
 - (i) Cancel the Lease pursuant to this Ordinance;
 - (ii) Grant an extension of time to cure the default;
 - (iii) Pursue other remedies, including execution on bonds, collection of insurance proceeds, or negotiated remedies;

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- (iv) Any combination of remedies listed above; or
 - (v) Any other remedy that may be set forth in any Business Site Lease management plan or policy.
- (b) If the Tribe cancels a Business Site Lease, the Tribe shall send the Lessee a cancellation letter within a reasonable time period. The cancellation letter shall 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; and
 - (iii) 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) Unless a lease authorizes a shorter cancellation period, a cancellation shall become effective 31 days after receipt of mailing. No appeal or other legal action shall change the effective date of the cancellation. Pending the outcome of any legal action, the Lessee shall make all requisite payments, as well as comply with the terms of the Lease.
- (d) If the Tribe 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.

6. 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 Tribe, and the failure to pay such amount shall be treated as a breach of the lease.

7. 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 Tribe may take appropriate emergency action.

8. Holdover-If a Lessee remains in possession after the expiration or cancellation of a lease, the Tribe shall treat such occupation as a trespass. The Tribe shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws, or alternatively, the Tribe may make a written request sent by certified mail to the BIA or the U.S. Attorney's Office for resolution under any applicable federal laws.

9. Trespass- If a person occupies the premises without the Tribe's approval, the Tribe may pursue appropriate remedies, including the filing of a trespass action to regain possession under tribal law.

330.090- TEIR Protocol

CITC 330.090 – 330.700 (referred to below as the “TEIR Protocol”) establish formal Tribal government procedures to evaluate the environmental impacts related to Leases.

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330.100-Definitions. The following definitions apply to the TEIR Protocol:

1. "Public" for purposes of commenting on a Tribal Environmental Impact Report (as described below) means the enrolled members of the Coquille Indian Tribe, individuals who live or work on Tribal Trust Land, and/or business entities or other institutions that are engaged in programs or activities on Tribal Trust Land that have a definable, concrete interest that may reasonably be affected by a Proposed Action.
2. "Agency" means any Coquille Tribal board, commission, department, or officer, authorized by law to propose rules for adoption by the Tribal Council or to adjudicate contested cases;
3. "Applicant" means any person, legal entity, corporation, organization, tribe or Agency seeking an approval of a Lease, Lease Amendment, Assignment of a Lease or a Leasehold Mortgage.
4. "Categorical Exclusion" means an exemption to the requirement to prepare a TEIR under this Ordinance.
5. "Executive Director" or "ED" means the Tribe's senior executive officer or his/her designee;
6. "Comprehensive Plan" means the Comprehensive Land Use Plan of the Coquille Indian Tribe, if any, as amended from time-to-time;
7. "Council" or "Tribal Council" means the Coquille Tribal Council;
8. "Cultural Resource" means:
 - (a) Any product of human activity or any object or place given significance by human action or belief, and in the case of this Ordinance, actions and beliefs related to the Tribe, its ancestors and its members;
 - (b) Any archaeological materials or objects, including human remains, of cultural or historic significance obtained from cultural or historic sites; or
 - (c) Any protected archaeological, cultural, or historical site.
9. "Culturally Sensitive Area" means an area with that designation, if any, on the Comprehensive Plan;
10. "Environmentally Sensitive Area" means an area with that designation, if any, on the Comprehensive Plan.
11. "Impact" means the effects or consequences of actions, and shall include direct and indirect effects as well as the effects of the action when added to past, present and reasonably foreseeable future actions;
12. "Mitigation" means any one or more of the following:
 - (a) Avoiding the Impact altogether by not taking a certain action or parts of an action;

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- (b) Minimizing Impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the Impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the Impact over time by preservation and maintenance operations during the life of the action; or
- (e) Compensating for the Impact by replacing or providing substitute resources or environments.

13. "National Environmental Policy Act (NEPA)" means the federal act (42 U.S.C. §§ 4321 et seq.) that requires federal agencies to consider the environmental Impacts of proposed federal projects and actions;

14. "Non-project Actions" involve land use and other management plans that govern the development or management of land;

15. "Person" means any individual; association of individuals; partnership; private, public, Tribal or municipal corporation, LLC or enterprise, or any county, Tribal, federal, state or local government, or any governmental entity;

16. "Proposed Action" and "Action" exclusively means the approval of a Lease, Lease Amendment, Assignment of a Lease or a Leasehold Mortgage;

17. "Potential Impact" means negative and substantial Impacts to the environment, including air, water, land, minerals, flora, fauna, ambient noise or Cultural Resources, which are likely to occur.

18. "TEIR Protocol" means the provisions of CITC 330.090 – 330.900.

19. "Tribal Environmental Impact Report (TEIR)" means a report prepared in accordance with the TEIR Protocol.

20. "Lease Review Official" means the Tribal Executive Director or his/her designed subordinate whom is responsible to carry out the environmental review described in this TEIR Protocol;

330.110-When This TEIR Protocol Applies

This TEIR Protocol applies to Actions or Proposed Actions that may have a Potential Impact to the environment, including cultural or archeological resources of the Tribe.

330.120-Categorical Exclusions

The requirement to prepare a TEIR shall not apply to:

1. A Proposed Action that is subject to review under NEPA; or
2. A Proposed Action that, in the Lease Review Official's opinion, qualifies as a Categorical Exclusion;

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3. All existing Tribal Trust Land Leases, Lease Amendments, Leasehold Mortgages and Assignments of Leases in existence on the date that CITC Chapter 330 was adopted.

330.150-Policies and Procedures

The ED may develop regulations to implement this TEIR Protocol. The regulations may include, but not be limited to:

1. Provisions for interpreting and implementing this TEIR Protocol and for providing uniform guidelines to Tribal programs and affected third parties;
2. The development of, and updates to, an Environmental Checklist to be used as a tool for the Lease Review Official to assess the Impacts of a Proposed Action;
3. Procedures to be applied to the preparation of an Environmental Checklist, including rules for timing of review, comment, data collection and other information;
4. Procedures for notifying the Applicant of actions taken and documents prepared;
5. Procedures and standards for Categorical Exclusions, including identification of additional Categorical Exclusions; and
6. All other reasonable actions as may be required to fulfill the intent of this TEIR Protocol.

330.180-Notification to Lease Review Official; Environmental Checklist

Applicants seeking Tribal approval for a Proposed Action must complete an Environmental Checklist.

330.200-Time Limits

Time limits imposed in this TEIR Protocol are guidelines and shall be construed in a manner that accomplishes the goals of this Ordinance.

330.230-Cost of Documentation

The cost of collecting and preparing any documentation and data shall be borne by the Applicant.

330.240-Emergency Activities

In the event of an emergency (i.e., flood, earthquake, etc.) declared by the Tribe, or declared by State or Federal governments and concurred upon by the Tribe for lands within its jurisdiction that are directly related to the emergency shall be exempted from this Appendix, except that, after the emergency is over, any unreviewed Action will be subject to a TEIR and the determination of a Lease Review Official.

330.250- Screening

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Upon receipt of a completed Environmental Checklist, the Lease Review Official will perform an initial screening and notify the Applicant, in writing, of whether:

1. The Lease Review Official requires more information to make a determination;
2. The project is Categorical Excluded from the TEIR requirement;
3. The project is Categorical Excluded, but requires completion of a TEIR due to extraordinary circumstances;
4. The project requires completion of a TEIR; or
5. The project may require a federal environmental review under NEPA.

330.280- Consultation Requirements

The Lease Review Official will consult with other Tribal departments during the TEIR process commensurate with the Potential Impacts of the Proposed Action. Consulted departments have a responsibility to respond in a timely and specific manner to requests for comments.

To the fullest extent practicable, the Lease Review Official will conduct the environmental review procedures concurrently with any other Impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. §§ 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.), and other relevant environmental review laws and executive orders.

330.300-Notification to Applicant

Upon completion of the screening process, the Lease Review Official shall inform the Applicant, in writing, of the proposal status, as follows:

1. If the Lease Review Official determines that the Proposed Action is Categorical Excluded from a TEIR review, the provisions of this TEIR Protocol will be deemed satisfied. A Categorical Exclusion does not relieve the Applicant from the requirement to meet any other applicable regulations; or
2. If the Lease Review Official determines that the Proposed Action is subject to a TEIR, the Applicant shall be notified in writing. The Applicant may request a meeting with the Lease Review Official to obtain information about the environmental review process.

330.310-Documentation

If the Lease Review Official makes a determination that a Proposed Action is subject to a TEIR, the Applicant may be required to provide documentation in addition to the previously-submitted Environmental Checklist, which may include, but is not limited to:

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1. Supplemental Documentation. To further assess the nature and scale of potential environmental Impacts, the Lease Review Official may require additional reports, analyses or other information about the Proposed Action and its Impacts; or

2. Functionally Equivalent Documentation. The Lease Review Official may request and rely upon existing and reasonably available environmental analyses or other documents. The proposal or action for which the relied-upon document was prepared need not be identical to the Proposed Action, but must provide a reasonable basis for comparison and analysis. The Lease Review Official shall review existing documents and determine the extent to which such relied-upon material is relevant and adequate.

330.320 Environmental Review Process-

1. Unless an Categorical Exclusion applies or a Proposed Action is otherwise not subject to the Environmental Review Process, before the approval of any Proposed Action, the Lease Review Official shall cause to be prepared a tribal environmental impact report ("TEIR"), analyzing the Potential Impacts of the Proposed Action; provided, however, that information or data which is relevant to such a TEIR and is a matter of public record or is generally available to the Public need not be repeated in its entirety in the TEIR, but may be specifically cited as the source for conclusions stated therein; and provided further that such information or data shall be briefly described, that its relationship to the TEIR shall be indicated, and that the source of such information will be reasonably available for inspection by the Public at location on Tribal Trust Lands that is open to the Public during regular business hours. The TEIR shall provide detailed information about the Potential Impacts for the Proposed Action, and shall include a detailed statement setting forth all of the following:

(a) A description of the physical environmental conditions in the vicinity of the Proposed Action (the environmental setting and existing baseline conditions), as they exist at the time the TEIR is issued;

(b) Potential Impacts of the Proposed Action;

(c) In a separate section:

(1) Potential Impacts of the Proposed Action that cannot be avoided or mitigated;
and

(2) Mitigation measures proposed, recommended, or required.

2. In addition to the information required pursuant to Subsection 330.190(1) a TEIR shall also contain a statement indicating the reasons, if any, for determining that various effects of the Proposed Action on the off-reservation environment do not qualify as Potential Impacts and consequently have not been discussed in detail in the TEIR. In the TEIR, the Potential Impacts shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

3. Notice of Completion of Draft TEIR-

(a) Within no less than thirty (30) days following the completion of the draft TEIR, the Lease Review Official shall:

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(i) Post a Notice of Completion and a copy of the draft TEIR on the Tribe's website and/or by direct mail to members of the Public. The Notice of Completion shall include all of the following information:

- (A) A brief description of the Proposed Action;
- (B) The proposed location of the Proposed Action;
- (C) An address where copies of the draft TEIR are available to the Public;
- (D) Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TEIR; and
- (E) The definition of "Public" as used in this Ordinance; and

(ii) Provide Public notice by at least one of the procedures specified below:

- (A) Publication of the draft TEIR in a newspaper of general circulation in the area affected by the Proposed Action, with notice to the Public of the opportunity to comment on any Potential Impacts of the Proposed Action; or
- (B) Posting of the Tribe's draft TEIR in the offices of the Tribe with notice to the Public of the opportunity to comment on any Potential Impacts of the Proposed Action.

4. Response to Public Comments- After the thirty (30) day comment period has ended, the Lease Review Official will review all comments received from the Public. Prior to the approval and execution of the Proposed Action, if any, the Lease Review Official will provide written responses to relevant and substantive Public comment concerning the Proposed Action and proposed or recommended mitigation measures addressing any Potential Impacts. The Lease Review Official's written responses will be posted or otherwise made apparent in the offices of the Tribe with notice to the Public.

330.350 Notification to Applicant

1. Upon completing a TEIR, the Lease Review Official shall prepare a written notification, addressed to the Applicant, summarizing the final TEIR and the responses to Public comments. The Lease Review Official will provide the ED with a copy of this notification.

2. The written notification shall constitute the enforceable determination of the Tribe.

330.400 Changes in Proposed Action Subsequent to TEIR

Any significant change to an Action or Proposed Action shall be immediately disclosed by the Applicant to the Lease Review Official. Such a change could require a new or updated TEIR analysis.

330.500 Appeal

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Only an Applicant may appeal the Lease Review Official's determination. Applicants may commence an appeal by requesting in writing that the Tribal Council evaluate and reconsider the Lease Review Official's determination.

Any appeal of a determination by the Lease Review Official must be filed no later than 15 calendar days from the date the determination was issued.

The request for reconsideration shall be made in writing and shall be served by certified mail, return receipt requested, to the Chairperson of the Tribal Council. The request for reconsideration shall contain a brief description of the Proposed Action, the specific reasons for the request, a summary of why the Lease Review Official's determination is erroneous and a summary of why the Applicant's desired outcome adequately addresses all environmental concerns.

The Tribal Council will reverse a determination of the Lease Review Official only if the Applicant can show by clear and convincing evidence that the Lease Review Official abused its discretion in the decision making process, or acted arbitrarily and capriciously; or if the project action is demonstrated to be not in compliance with this Appendix.

330.700 Enforcement

If an Applicant is noncompliant with a determination, the Tribe may pursue enforcement measures through any legal means, including without limitation:

1. The imposition of fines;
2. The imposition of required restitution for costs incurred by the Tribe to correct actions or omissions in violation of a determination, including, without limitation, attorney's fees and costs, court costs and litigation expenses; and
3. Requests for injunctive relief from any court of competent jurisdiction;

330.900 Severability

If a court of competent jurisdiction finds any provision of this Ordinance to be invalid or illegal under applicable Tribal and or federal law, such provision shall be severed from this Ordinance and the remainder of this Ordinance shall remain in full force and effect.

330.950 Sovereign Immunity

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

330.990 Effective Date Amendment

1. This Ordinance shall take effect upon its adoption by the Tribal Council and approval by the Secretary of the Interior.

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2. This Ordinance may be amended by a majority vote of the Tribal Council at a duly called Tribal Council meeting at which a quorum is present. All substantive amendments to this Ordinance must be submitted to the Secretary of the Interior for review and shall become effective upon Secretarial approval.