

CHAPTER 38  
BUSINESS LEASE APPROVAL ACT

**38-1 AUTHORITY**

This Business Lease Approval Act ("Act") is adopted pursuant to the Act to Implement the Federal Helping Expedite and Advance Responsible Tribal Home Ownership with Regard to Business Leases enacted by the Kootenai Tribal Council on April 6, 2021 and as amended on August 24, 2021 and the authority vested in the Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1(d) of the Constitution of the Kootenai Tribe of Idaho.

**38-2 PURPOSE**

38-2.01 The purpose of this Act is to streamline approval of Leases on real property held in trust by the United States for the Tribe for business or commercial purposes.

38-2.02 This Act shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), Pub. L. No. 112-151 (codified at 25 U.S.C. 415(h)), by establishing a process through which a Lease Agreement with the Tribe will not require the approval of the Secretary of the Interior ("Secretary") if the Lease Agreement is executed under this Act. Nothing in this Act is intended to expand the authority or responsibility of the Secretary beyond that provided for under applicable federal statutes or regulations.

**38-3 APPLICABILITY**

38-3.01 Except as excluded under Section 38-3.02 below, or as contrary to applicable federal statutes and regulations, this Act shall apply to Leases of Tribal Land for the following purposes:

- (1) Leases for business purposes;
- (2) Commercial or industrial leases for retail, office, manufacturing, storage, or other business purposes; and
- (3) All future Leases for purposes or uses listed above.

38-3.02 This Act shall not apply to:

- (1) Agricultural Leases;

(2) Residential Leases authorized under Chapter 26A Residential Lease Approval Act; or

(3) To any Lease of individually owned Indian allotted land in accordance with 25 U.S.C. 415(h)(2);

(4) Unrestricted fee lands and fractionated interests; or

(5) Mineral Leases.

**38-4 CONTROLLING LAW**

38-4.01 To the extent that this Act conflicts with any applicable federal statutes or regulations, the federal statute or regulation shall control.

38-4.02 To the extent that any Lease to which this Act applies conflicts with this Act, this Act shall control.

**38-5 AMENDMENT**

This Act may be amended by majority vote of the Tribal Council, provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

**38-6 EFFECTIVE DATE**

This Act shall become effective as the Tribe's law, for all purposes, on the date of enactment by the Tribal Council and approval by the Secretary.

**38-7 SEVERABILITY**

If any provision or provisions of this Act shall in the future be declared invalid by the Kootenai Tribal Court or another court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

**38-8 DEFINITIONS**

For the purpose of this Act, the below terms are defined:

38-8.01 "Assignment" shall mean 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.

38-8.02 "Best Interest of the Tribe" shall mean the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Tribal Land, increasing employment and jobs, and preserving the sovereignty of the Tribe.

38-8.03 "Business Site Lease(s)" shall mean any Lease for business and/or commercial purpose under this Chapter.

38-8.04 "Cancellation" shall mean action to end a Lease.

38-8.05 "Constructive Notice" shall mean notice:

(1) Posted at the Tribal Administration Office;

(2) Published in the local newspaper(s) nearest to the affected land and/or announced on the local radio station(s); and

(3) Published on a publicly accessible electronic message board or network which the Tribe has designated for such communications.

38-8.06 "Fair Annual Lease Value" shall mean the amount of rental income that a leased tract of the Tribe's land would most probably command in an open and competitive market, or as determined by competitive bidding.

38-8.07 "Lease" shall mean a written contract between the Tribe and a Lessee, whereby the Lessee is granted a right to possess Tribal Land, for a specified purpose and duration. The Lessee's right to possess will limit the Tribe's right to possess the leased premises only to the extent provided in the Lease.

38-8.08 "Lessee" shall mean a person or entity who has acquired a right to possess Tribal Land by executing a Lease.

38-8.09 "Leasehold Estate" shall mean the possessory interest in Tribal Land established pursuant to a Lease between a Lessor and a Lessee.

38-8.10 "Leasehold Mortgage" shall mean 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.

38-8.11 "Realty Department" shall mean the Tribe's Realty Department.

38-8.12 "Lessor" shall mean the Tribe.

38-8.13 "LTRO" shall mean the Land Titles and Records Office of the Bureau of Indian Affairs.

38-8.14 "Mortgage" shall mean a lien on a Leasehold Estate given to secure advances on a loan to purchase, construct, refinance, or renovate a business site or improvement, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

38-8.15 "NEPA" shall mean the National Environmental Protection Act of 1969, 42 U.S.C. 4321 *et seq.*

38-8.16 "Permanent Improvements" shall mean buildings, other structures, and associated infrastructure attached to the land.

38-8.17 "Public" shall mean for the purpose of the Environmental Review Process, any person or entity with the potential to be significantly affected by the Lease or the Lease Activity.

38-8.18 "Real Property" shall mean the Tribe's property that is land, or land and building.

38-8.19 "Secretary" shall mean the Secretary of the Interior.

38-8.20 "Significant Effect on the Environment" shall mean substantial, or potentially substantial, adverse change on the environment.

38-8.21 "Space Lease" means either 1) a Lease of floor space within an existing or to be constructed facility on Tribal Land, or 2) a Lease of a section of ground on Tribal Land, such as for outside storage.

38-8.22 "Sublease" shall mean a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.

38-8.23 “Tribal Land” shall mean any tract, in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for Bureau of Indian Affairs administrative purposes.

38-8.24 “Tribe” or “Tribal” shall mean the Kootenai Tribe of Idaho.

38-8.25 “Trust Land” or “Restricted Status Land” shall mean any tract, held in trust or restricted status.

38-8.26 “Trust” or “Restricted Status” shall mean

(1) that the United States holds title to the tract in trust for the benefit of the Tribe; or

(2) that the Tribe hold title to the tract, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under federal law or limitation in federal law.

38-8.27 “Violation” or “Default” shall mean a failure to take an action, including payment of compensation, when required by the Lease, or to otherwise not comply with a term of the Lease.

### 38-09 APPROVAL OF LEASES

38-9.01 All Leases shall be subject to the approval of the Tribal Council.

38-9.02 All Leases shall be signed by the Chairperson or Vice-Chairperson of the Tribe.

38-9.03 After the Secretary approves this Act, all Leases which are approved and executed under this Chapter shall be effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Act and reassumes responsibility for such approval.

38-9.04 Any Lease which is approved and executed under this Chapter shall refer to this Chapter as authority for its execution on behalf of the Tribe.

38-9.05 Leases shall become effective once approved and signed by all parties.

### 38-10 LEASE REQUIREMENTS

All Leases shall be in writing, and at a minimum, shall:

38-10.01 Describe the tract or parcel that is being leased with reference to a public or private survey plat, if available, in terms sufficient to determine the location;

38-10.02 State the purpose of the Lease and authorized uses of the premises;

38-10.03 Identify the parties to the Lease;

38-10.04 State the effective date and term of the Lease, which shall not exceed twenty-five (25) years; except that any such Lease may include an option to renew for up to one (1) additional term, which may not exceed twenty-five (25) years. The Lease must specify the time and manner the option must be exercised, any additional consideration due upon the exercise of the option, and any other conditions for renewal;

38-10.05 If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease, the Lease shall identify the general type and location of each improvement, and the responsibility for constructing, operating, maintaining, removal, and managing the Permanent Improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the Lease;

38-10.06 Specify all rent and payment requirements, including payment due dates, payee, place of payment, form of payment, and any interest, and how and when rental review and adjustments may occur;

38-10.07 State the due diligence, performance bond, and insurance requirements that apply, if any;

38-10.08 State the process for amendment, (including, but not limited to, assignment, sublease, or leasehold mortgage) which shall be in writing, approved by Tribal Council, and signed by both parties;

38-10.09 State the governing law, which shall include the Tribe's laws and applicable federal statutes and regulations; and

38-10.10 Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation, each of the required terms for Leases such as, but not limited to:

(1) Use of Premises. It is herein agreed that during the Lease term there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on leased premises.

(2) Violations of Lease. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements.

(3) Historic Preservation. If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the Lessee will contact the Tribe and the Bureau of Indian Affairs to determine how to proceed and appropriate disposition.

(4) Inspection of Premises. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representative shall have the rights, at any reasonable times during the term of this Lease, and with reasonable notice, to enter upon the leased premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

(5) Inspection of Records. The Lessor and the appropriate agencies may treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as Lease violation.

(6) Hold Harmless. The Lessee holds the Lessor and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises.

(7) Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage,

transportation, or disposal of hazardous materials, or release or discharge or any hazardous material from the leased premises that occurs during the Lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

(8) Improvements. All permanent improvements and responsibility for constructing, operating, maintaining, and managing permanent improvements under this Chapter are of the Lessee during the term of this Lease including any renewal or extension thereof.

(9) Irrigation Districts. If the Lease premises are within an Indian irrigation project or drainage district, except as otherwise provided for in 25 C.F.R. Part 171, as the same may be amended, replaced, or superseded, the Lessee must pay all the 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 or drainage district.

#### 38-11 LEASE APPLICATION PROCESS

38-11.01 Land Use and Site Planning: Business Leases are issued only for properties identified appropriate for business development by the Tribal Council. Prior to approval of a business Lease, a certified survey map with a legal land description for the property must be approved and provided to the Realty Department as a plan-of-record.

38-11.02 Application Submittal: Applicant submits a completed application to the Realty Department. The Realty Department retains the original application. The application is stamped in with submitted time and date and expires three (3) months from the stamped date if no action is taken. A specific Lease parcel is not chosen until the application information is complete with proof of financing.

38-11.03 Application Review: The Realty Department staff will review the application for completeness. Incomplete applications will be returned to the Applicant with a letter outlining information necessary to move the application forward. Completed applications are filed with the Realty Department.

38-11.04 Business Site Lease Approval: Once the Lease application is complete, the Realty Department will draft a standard Business Site

Lease per the requirements under Section 38-10. The Realty Department staff will send the proposed Business Site Lease to the Tribal Council or its delegate for review. The Tribal Council or its delegate will make an advisory recommendation to the Tribal Council. The Tribal Council will approve or deny the Business Site Lease. Formal ratification by the Tribal Council is required prior to moving forward with the Business Site Lease. The Tribal Council may table the Business Site Lease pending additional information, if needed. The Tribal Council will sign two (2) original completed Business Site Lease applications and forward the approved Lease to the Realty Department with a copy of the Certification authorizing the Business Site Lease. Tribal Council shall provide both an original signed Certification and original signed Business Site Lease to the Realty Department. Realty Department will record and retain the original Lease documents in a Lease file.

### 38-12 APPRAISAL

38-12.01 The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure utilizing the following data:

- (1) Improvement cost;
- (2) Replacement cost;
- (3) Earning capacity; and

(4) Sales and Lease data of comparable sites or by similar methodology.

38-12.02 An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every Business Site Lease.

38-12.03 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 and shall be attached to every Business Site Lease.

### 38-13 FAIR ANNUAL LEASE VALUE

38-13.01 No Lease shall be approved for less than the present Fair Annual Lease Value set forth in the appraisal, except as follows:

(1) The Lease is in the development period;

(2) The Tribal Council is providing an incentive for a business to locate on Tribal Land and must provide Lease concessions, Lease improvement credits, or Lease abatements to attract such businesses; or

(3) The Tribal Council determines such action is in the Best Interest of the Tribe.

38-13.02 A Lease may be structured at a flat lease rate.

38-13.03 A Lease may be structured as a flat lease rate plus a percentage of gross receipts if the Lessee is a business located in a shopping center or mall or the Lessee generates over \$1,000,000 annually in gross receipts.

38-13.04 A Lease may be structured based on a percentage of gross receipts or based on a market indicator.

38-13.05 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.

38-13.06 Leases for terms of less than five (5) years may be structured to allow for lease rate adjustments. The Lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

38-13.07 Leases may be amended to allow for lease rate adjustments.

38-13.08 The Realty Department 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 the Lease file. The Realty Department will further provide certified copies, including any amendments or renewals to the Lease, to the Secretary, and the Lessee.

### 38-14 DISCHARGE OF TRUST - PAYMENT

38-14.01 For any Lease requiring payments to be made to the Tribe, the Tribe shall provide the Secretary with such documentation of the Lease

payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that the United States shall not be liable for losses sustained by any party to a Lease executed.

### 38-15 INSURANCE

38-15.01 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.

38-15.02 The insurance may include, but is not limited to, property, liability or casualty, or other insurance as specified in the Business Site Lease.

38-15.03 The Tribe and the United States must be identified as additional insured parties.

38-15.04 The Tribal Council may waive these requirements 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 Tribe's best interest.

### 38-16 PERFORMANCE BOND

38-16.01 Unless waived in writing by the Tribal Council in accordance with this Chapter, 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 may guarantee:

- (1) The annual Lease payment;
- (2) The estimated development cost of improvements; and
- (3) Any additional amount necessary to ensure compliance with the Lease.

38-16.02 The Tribal Council may waive the bond requirement, or reduce the amount, if in the Best Interest of the Tribe. The Realty Department shall maintain written records of waivers and reductions.

38-16.03 The performance bond may be in one of the following forms:

- (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable treasury securities; or

(4) Surety bond issued by a company approved by the U.S. Department of Treasury.

38-16.04 The obligations of the Lessee and its sureties to the Tribe may be enforceable by the United States so long as the land remains in trust.

### 38-17 IMPROVEMENTS

38-17.01 All Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within a reasonable schedule specified in the Lease.

38-17.02 Lessee, at Lessee's expense or as otherwise provided in the Lease, may construct improvements under a Lease if the Lease specifies or provides for the development of:

- (1) A plan that describes the type and location of any improvements to be built by the Lessee; and
- (2) A general schedule for construction of improvements.

38-17.03 Lessee shall provide the Tribal Council 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.

38-17.04 When requested by the Tribal Council or otherwise required in the Lease, Lessee shall further provide the Tribal Council, in writing, an updated schedule for construction.

38-17.05 Failure of the Lessee to comply with these requirements will be deemed a violation of the Lease and may lead to termination of the Lease pursuant to Section 38-18.

38-17.06 Improvements to the premises shall become property of the Tribe unless otherwise provided for in the Lease. If improvements will be removed, the Lease may specify the maximum time allowed for such removal.

38-18 TERMINATION OF LEASE

Unless otherwise provided in the Lease, if utilization of a business site has not commenced within one (1) year of the execution date of the Lease, the Lease may be terminated. The Realty Department will notify the Lessee that they have thirty (30) days in which to show utilization of the business site. If Lessee does not show utilization of the business site within thirty (30) days, the Realty Department will forward the Lease to the Tribal Council for review and make an appropriate recommendation for extension or termination.

38-19 LEASE VIOLATIONS AND REMEDIES38-19.01 Defaults.

(1) If the Tribal Council determines the Lessee is in default, the Tribal Council shall send the Lessee a notice of default within a reasonable time of the determination. Such time period for notice shall be expressly provided for either in this Chapter or in the Lease itself. The notice of default may be provided by certified mail, return receipt requested.

(2) Within ten (10) business days of receipt of the mailing the Lessee shall:

- (a) Cure the default and notify the Tribal Council in writing that the default has been cured;
- (b) Dispute the Tribal Council's determination that the Lease is in default and explain why the Lease should not be cancelled; or
- (c) Request additional time to cure the default.

38-19.02 Remedies.

(1) If the Lessee fails to cure the default within the prescribed period, the Tribal Council may:

- (a) Cancel the Lease pursuant to this Chapter;
- (b) Grant an extension of time to cure the default;

- (c) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
- (d) Any combination of the remedies listed above; or
- (e) Any other remedy set forth in the Business Site Lease management plan or policy.

(2) If the Tribal Council cancels a Business Site Lease, the Tribal Council 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:

- (a) Explain the grounds for cancellation;
- (b) Notify the Lessee of unpaid amounts, interest charges, or late payment penalties due under the Lease;
- (c) Notify the Lessee of its right to appeal; and
- (d) Order the Lessee to vacate the premises within thirty (30) business days of receipt of mailing of the cancellation letter, if an appeal is not filed by that time.

(3) A cancellation shall become immediately effective thirty-one (31) business days after receipt of mailing of the order to vacate. The filing of an appeal shall not change the effective date of the cancellation. If the Lessee submits a request in writing to the Tribal Council and the request is received within seven (7) business days of the mailing date of the order to vacate, the Tribal Council in its discretion may grant the Lessee permission to occupy the premises beyond the cancellation effective date during the pendency of an appeal. Pending the outcome of an appeal, the Lessee shall comply with the terms of the Lease.

(4) If the Tribal Council 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.

(5) Pursuant to the authority of the Secretary to fulfill the trust obligation of the United

States to the Tribe under federal law (including regulations), the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any Lease by the Tribe.

**38-19.03 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 are not subject to notice and shall apply automatically, and the failure to pay such amount shall be treated as a breach of the Lease.

**38-19.04 Harmful or Threatening Activities.** If a Lessee or other party causes or threatens to cause immediate and significant harm to the premises under the Lease, or undertakes criminal activity thereon, the Tribal Council may take appropriate emergency action.

**38-19.05 Holdover.** If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribal Council shall treat such occupation as a trespass. The Tribal Council shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to Tribal laws; alternatively, the Tribal Council may make a written request sent by certified mail to the Secretary for resolution under any applicable federal laws.

**38-19.06 Trespass.** If a person occupies the premises without the Tribal Council's approval, the Tribal Council may pursue appropriate remedies, including the filing of a trespass action to regain possession under Tribal law. Alternatively, the Tribal Council may make a written request sent by certified mail to the Secretary for resolution under any applicable federal laws.

## **38-20 FORFEITURE OF LEASE**

A Lessee may forfeit their Lease by obtaining a Lease Cancellation Form from the Realty Department. The Lessee must submit a signed, notarized original to the Realty Department. The Realty Department will forward the form along with a certification rescinding the Lease to the Tribal Council for action. Once the certification is executed, it is filed with the Realty Department. The property will then be offered in accordance with this Chapter.

## **38-21 LEASE EXTENSIONS**

The Tribal Council will review requests for Lease extensions on a case-by-case basis.

## **38-22 RECORDING**

**38-22.01** The Realty Department will provide the completed Lease. Lessee shall be required to pay Lease rent as is indicated by the Lease prior to Lease issuance. Following signing and payment of rent, the Realty Department will record and provide a certified copy to the Lessee.

**38-22.02** Original Lease documents, amendments, leasehold mortgages, renewals, and subleases will be maintained by Realty Department. Copies will be sent to the BIA Agency with administrative jurisdiction over the Tribe for encoding and recording in the LTRO.

## **38-23 [RESERVED]**

## **38-24 PURPOSE OF ENVIRONMENTAL REVIEW**

The purpose of this Section is to establish an environmental review process.

## **38-25 REQUIREMENTS FOR APPROVAL**

**38-25.01** The Tribal Council shall not approve a Lease under Section 38-09 of this Chapter unless:

(1) The Environmental Department has reviewed the Lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the premises, and has:

- (a) Made a determination that the uses authorized by the Lease are included within the categorical exclusion stated in Section 38-26 and provided that determination in writing to the Realty Department;
- (b) Issued a final decision after following the procedure set forth in Section 38-27; or

(2) The Environmental Department has provided the Realty Department with notice that the Tribe has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable



federal agency rather than the procedures set forth in Section 38-27.

### 38-26 CATEGORICAL EXCLUSIONS

38-26.01 The Tribal Council hereby finds that the following actions do not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in Subsection 38-26.02, are categorically excluded from the procedures set forth in Section 38-27:

(1) Approval of the Lease for use of an existing business site, including any associated improvements, access roads, and utilities.

38-26.02 Notwithstanding Subsection 38-26.01, the Environmental Department shall follow the procedures set forth in Section 38-27 if it determines that extraordinary circumstances exist under which the use of the premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:

(1) Substantial controversy on environmental grounds;

(2) Presence of cultural resources; or

(3) Presence of historic properties.

### 38-27 ENVIRONMENTAL REVIEW

Unless a categorical exclusion applies, the Environmental Department shall cause the effects on the environment of the intended uses authorized by the proposed Lease to be identified and evaluated as follows:

38-27.01 No Significant Impact. If the Environmental Department determines that the uses authorized by the proposed Lease will not have a Significant Effect on the Environment then it shall cause the following to occur in order set forth below:

(1) A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days via Constructive Notice.

(2) If there is a substantial interest in holding a public meeting it shall be held in a manner determined by Tribal Council to provide an opportunity for Tribal citizens, Reservation

residents, and the Public to comment, both written and verbal, on the finding of no significant impact.

(3) Comments shall be reviewed and analyzed, and a report shall be issued by the Environmental Department responding to relevant and substantive comments, if any, regarding the finding of no significant impact. The report shall be posted for a minimum of fifteen (15) calendar days via Constructive Notice.

(4) Unless Subsection 38-27.02 applies, a final decision confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, sent to the Tribal Council for approval, and posted for fifteen (15) calendar days via Constructive Notice.

38-27.02 Significant Impact. If the Environmental Department determines that the proposed Lease will have a Significant Effect on the Environment, then it shall cause the following to occur in the order set forth below:

(1) A draft environmental review which identifies and evaluates any Significant Effect of the Environment of uses authorized by the proposed Lease shall be issued and posted for a minimum of thirty (30) calendar days via Constructive Notice;

(2) A meeting shall be held in a manner determined by Tribal Council on the draft environmental review to provide an opportunity for Tribal citizens, Reservation residents, and the Public to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

(3) Comments shall be reviewed and analyzed and a report by the Environmental Department shall be issued responding to relevant and substantive comments, if any, on any Significant Effect on the Environment of the uses authorized by the proposed Lease. The report shall be posted for a minimum of thirty (30) calendar days via Constructive Notice;

(4) A final environmental review describing the conclusions of the Environmental Department report on the issues and evidence gathered under this Subsection shall be issued and posted for a minimum of thirty (30) calendar days via Constructive Notice; and

(5) A final decision assessing the potential for any Significant Effect on the Environment associated with the uses authorized by the Lease shall be issued, sent to the Tribal Council for approval, and posted for a minimum of thirty (30) calendar days via Constructive Notice.

### 38-28 APPROVAL OF LEASEHOLD MORTGAGE

38-28.01 All Leasehold Mortgages under a Lease must be separately authorized by the Tribal Council, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

38-28.02 After the Secretary approves this Act, all Leasehold Mortgages that are authorized under this Chapter shall be effective without federal approval under 25 U.S.C. 415(h), unless the Secretary rescinds approval of this Chapter and reassumes responsibility for such approval.

### 38-29 RECORDING LEASEHOLD MORTGAGES

All Leasehold Mortgage, assignments, amendments, satisfactions, and sales relating thereto shall be recorded at the Realty Department and copies to the BIA Agency with administrative jurisdiction over the Tribe for encoding and recording in the LTRO, to the extent required by a Mortgagee. A Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

### 38-30 RIGHT TO FILE COMPLAINT

A member of the Public ("Party") who has reasonable grounds to believe that the Tribe has failed to comply with this Chapter has the right to file a Complaint under this Section.

(1) Form of Complaint. The Complaint shall be in writing and signed by the Party, with a description of the alleged noncompliance with this Chapter that is the subject of the Complaint, state all relief requested and submitted to the Tribal Council.

(2) Informal Resolution. The Tribal Council shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Party for such purpose. All Complaints which are resolved through such informal resolution shall be reduced to writing and signed by the Chairperson and the Party.

(3) Decision. If the Complaint is not resolved informally, the Tribal Council shall issue a decision on the Complaint, which shall be in writing and signed by the Chairperson. The Tribal Council shall cause the decision to be delivered to the Party no later than thirty (30) business days after receipt of the Complaint. The decision of the Tribal Council shall constitute a final decision.

(4) Appeal. A Party who has exhausted the Tribe's remedies set forth in this Section may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the Tribe's compliance with this Chapter.

### 38-31 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Act shall be deemed to waive the sovereign immunity of the Tribe or any of its officials, employees, or representatives.