

**TITLE 42A**  
**LUMMI NATION CODE OF LAWS**  
**TRUST LANDS LEASING CODE**

Enacted:



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**TITLE 42A  
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TRUST LANDS LEASING CODE**

**Chapter 42A.01 Purpose and Scope**

**42A.01.010 Title**

This Title shall be known as the Trust Lands Leasing Code.

**42A.01.020 Authority**

This Title is promulgated pursuant to the powers vested to the Lummi Indian Business Council in the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington.

**42A.01.030 Purpose**

(a) The purpose of this Title is to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), codified at 25 U.S.C. 415(h). The HEARTH Act removes the requirement of obtaining approval from the Bureau of Indian Affairs (BIA) for certain leases of restricted Indian lands when an Indian tribe executes a lease under tribal regulations approved by the Secretary of the Interior.

(b) Since time immemorial, the Lummi Nation has occupied, dwelt upon, and made use of the lands within the Lummi Reservation and beyond, ranging along the Pacific Northwest coast, including those lands outside the boundaries of the Lummi Reservation which are held in trust by the United States for the benefit of the Lummi Nation. The Lummi Nation possesses an inherent sovereignty and authority to self-govern.

(c) The Lummi Indian Business Council (LIBC) finds that the ability to lease Lummi Nation Trust Lands without first obtaining approval by the BIA is an attribute of self-governance and tribal sovereignty, and exercising that ability leads to a fuller expression of sovereignty and self-governance.

(d) The LIBC also finds that this Title will enhance accountability and ensure that Lummi Nation Trust Lands leased from the Lummi Nation are used to promote self-governance,

encourage economic self-sufficiency, and increase business activity and employment.

**42A.01.040 Scope**

(a) Title shall apply solely to the lands, regardless of location, that are held in trust by the United States for the benefit of the Lummi Nation over which the Nation exercises governmental power, referred to hereafter as "Lummi Nation Trust Lands".

(b) This Title shall not apply to unrestricted fee lands or lands held in trust by the United States for individual landowners.

(c) This Title shall not authorize leases for the exploration, development, or extraction of any mineral resources.

**Chapter 42A.02 Definitions**

**42A.02.010 Definitions**

Where a term is not defined in this Title, it shall be given its ordinary meaning. Terms used in this Title, and in regulations adopted under it, shall have the following meaning, except where otherwise defined within this Title or where the context clearly indicates otherwise:

(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) "Best Interest of the Nation" means, but is not limited to, when an outcome is most favorable based on a balancing of interests undertaken in order to attain the highest economic income, increase economic development in Indian Country, preserve and enhance the value of Lummi Nation Trust Land, increase employment in Indian Country, and preserve the sovereignty of the Nation.

(c) "BIA" means the Secretary of the Interior or the Bureau of Indian Affairs within the United States Department of the Interior.

(d) "Cancellation" means action by the Nation to end a lease pursuant to this Title.

(e) "Day" means a calendar day unless otherwise specified.

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

(g) "Environmental Review" means a review of the anticipated environmental effects of a proposed leasing transaction to assess whether a proposed development or Project will have a positive or negative environmental impact.

(h) "Environmental Reviewer" means an employee of the LIBC Planning Department, or as otherwise designated by the Nation in a duly enacted resolution, authorized to conduct the Environmental Review.

(i) "Fair Annual Lease Value" means the amount of rental income that a leased tract of Lummi Nation Trust Land would most probably command in an open and competitive market reflecting all terms and conditions of the proposed Lease, or as determined by competitive bidding.

(j) "Holdover" means circumstances in which a Lessee remains in possession of the leased premises after the lease term expires or the Lease is terminated or cancelled.

(k) "LCL" means the Lummi Code of Laws.

(l) "Lease" means a written contract between the Lessor and a Lessee, whereby the Lessee is granted a right to possess Lummi Nation Trust Land for a specified purpose and 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.

(m) "Leasehold Mortgage" or "Mortgage" means a mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for debt or other obligation owed by the Lessee to a lender or other mortgagee.

(n) "Leasing Authority" means the governmental employee or entity designated by the Nation to: perform the duties and responsibilities of the Lessor on behalf of the

Nation; approve and disapprove leasing transactions, which includes but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases, and lease terminations; and to manage and administer the lease, if entered into. The LIBC Planning Director is designated as the Leasing Authority, unless or until the Nation designates another governmental employee or entity in a duly enacted resolution. The LIBC Planning Director may delegate Leasing Authority responsibilities to other employees of the LIBC Planning Department.

(o) "Leasing Decision" means the following type of Lease transactions that will be acted on by the Nation: Lease execution; Lease amendment or modification; Sublease if such Sublease requires consent by the Nation under this Title, and Lease Assignment if such Assignment requires consent of the Nation under this Title.

(p) "Lessee" means a person or entity that has acquired a legal right to possess Lummi Nation Trust Land by a lease pursuant to this Title.

(q) "Lessor" means the Nation, who holds beneficial title to Lummi Nation Trust Lands and conveys the right to possess property under a lease pursuant to this Title.

(r) "LIBC" means the Lummi Indian Business Council, the duly constituted governing body of the Lummi Nation by the authority of the Constitution and Bylaws, as amended, of the Lummi Tribe of the Lummi Reservation, Washington.

(s) "LTRO" means the Land Titles and Records Office of the BIA.

(t) "Lummi Nation Trust Land" means all land, whether located within or outside the exterior boundaries of the Lummi Reservation, held in trust by the United States for the benefit of the Lummi Nation.

(u) "Nation" shall mean the Lummi Nation, a federally recognized Indian Tribe in the United States, also listed in the Federal Register as the Lummi Tribe of the Lummi Reservation.

(v) “Nominal Rental or Nominal Compensation” means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

(w) “Public” shall mean enrolled members of the Lummi Nation.

(x) “Restoration and Reclamation Plan” means a plan that defines reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation or construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

(y) “Secretary” means the Secretary of the Interior.

(z) “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 or socio-economic significance.

(aa) “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.

(bb) “Tribal Lease Environmental Impact Statement” and “TLEIS” mean a public document used to analyze and report on the probable significant impacts and effects of development on the human environment, to identify alternatives, and to disclose possible ways to reduce or avoid environmental damage.

(cc) “Trust Land” means all lands of the Tribe within the limits of the Tribe’s Reservation or land over which the Tribe exercises governmental power and that is held in trust by the United States for the benefit of the Tribe.

## **Chapter 42A.03 Leases**

### **42A.03.010 Applicability**

(a) This Chapter applies to all Leases of Lummi Nation Trust Lands governed by this Title except Agricultural Leases. A Lease shall be:

- (1) ground leases (undeveloped land);
- (2) leases of developed land (together with the permanent improvements thereon);
- (3) leases for residential purposes;
- (4) leases for religious, educational, cultural, or other public purpose; and
- (5) commercial or industrial leases for hotel, retail, office, manufacturing, storage, biomass, wind and/or solar energy facilities, waste-to-energy, or other business purpose.

(b) A Lease may authorize the construction of a single-purpose or mixed use Project designed for the use by any number of Lessees or occupants.

(c) Nothing herein shall be construed to affect the terms and conditions of leases that were in effect before this Title became effective. The Nation shall not exercise Lease approval authority as provided herein until such time as the Secretary approves this Title pursuant to the HEARTH Act, and after such approval no Lease shall be valid or binding upon any party until approved according to this Title.

### **42A.03.020 Terms and Conditions**

Leases shall be governed by the terms and conditions set forth in Lease, subject to the requirements of this Title. The terms and conditions of a Lease may only be modified with the written approval of the Lessee and the Nation. The Lessee is responsible for understanding the Lease terms and conditions utilizing its own consultants and advisors.

### **42A.03.030 Duration and Renewal**

(a) Duration. The maximum term of a Lease shall be as follows:

- (1) a Lease for residential, religious, educational, recreational, or other public purpose shall not exceed seventy-five (75) years; and
- (2) all other Leases shall not exceed twenty-five (25) years, except that such Lease may include an option to renew for up to two (2) additional terms, each of which may not exceed twenty-five (25) years.

(b) Renewal. If the Lease provides for an option to renew, the Lease must specify:

- (1) the time and manner in which the option must be exercised or is automatically effective;
- (2) that confirmation of the renewal will be submitted to the Leasing Authority unless the lease provides for automatic renewal;
- (3) whether consent by the Nation to the renewal is required;
- (4) that the lessee must provide notice of the renewal to the Leasing Authority and any sureties and mortgagees;
- (5) the additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
- (6) any other conditions for renewal (such as, but not limited to, that the Lessee must not be in violation of the Lease at the time of renewal).

#### **42A.03.040 Approval**

(a) The Leasing Authority may issue a Lease, which is subject to approval by the Nation, so long as the Lease complies with all provisions of this Title and it is in the Best Interest of the Nation. The Leasing Authority shall not issue the Lease until the Nation has duly enacted a resolution approving such Lease.

#### **42A.03.050 Obtaining a Lease**

(a) Information on obtaining a Lease shall be available from the Leasing Authority.

(b) All applicants for a Lease shall submit the following documents to the Leasing Authority:

- (1) Completed Lease application;
- (2) Information adequate to allow the Leasing Authority to assess the proposed assignee's financial and other capability to undertake the Lease obligations;
- (3) Site survey and legal description completed in accordance with this Title;
- (4) Environmental Review, where required by this Title;

(5) Evidence of compliance with all applicable Lummi Nation laws requiring appropriate approvals, authorizations and/or permits; and

(6) Other documents as may be required by the Leasing Authority.

(c) The Leasing Authority is responsible for maintaining all records of all Leases. It shall record Leases, Subleases, Assignments, amendments, encumbrances, renewals, modifications, cancellations, and terminations, with the LTRO having jurisdiction over the land. The Leasing Authority will provide copies of all Leases to the BIA.

(d) Records of activities undertaken pursuant to this Chapter are the property of the Nation. Records compiled, developed, or received by the Secretary pursuant to this Chapter are the property of the Secretary.

(e) The Nation shall have all powers necessary and proper to enforce all applicable laws, ordinances and regulations, subject to the terms of the Lease, including, but not limited to, the assistance of the Lummi Nation Police Department.

#### **42A.03.060 Mandatory Provisions of a Lease**

(a) All Leases shall, at a minimum, identify the following:

- (1) The tract, location, or parcel of land being leased sufficient in detail to meet the recording requirements of the BIA's LTRO;
- (2) The purpose of the Lease and authorized uses of the leased premises;
- (3) The parties, terms, and effective date of the Lease;
- (4) Payment requirements, including but not limited to:
  - (A) how must rent is due;
  - (B) the dates on which payments are due,
  - (C) the form and method of payment,
  - (D) the person or entity to whom payment must be directed, and

(E) late payment charges or other penalty charges, including interest rate charges;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, managing, and removing any permanent improvements to the leased premises in accordance with LCL §42A.03.130;

(6) Insurance requirements under LCL §42A.03.110;

(7) Bonding requirements under LCL §42A.03.120; and

(8) Due diligence requirements under LCL §42A.03.130.

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

(1) There must not be any unlawful, harmful or threatening conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(2) State the governing law in accordance with LCL §42A.06.020 and that the Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements in accordance with LCL §42A.06.010(b) and §42A.06.020;

(3) The Nation has the right, at any reasonable time during the term of the lease and upon reasonable notice, under LCL §42A.03.160, to enter the leased premises for inspection and to ensure compliance;

(4) An indemnification and hold-harmless provision in favor of the Nation, the United States, and Lessor, for the Lessee's use or occupancy of leased premises; and

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

(c) Where the Leasing Authority determines through the Environmental Review process that mitigation measures or a Restoration and Reclamation Plan is required, such requirements shall be provided in the Lease.

#### **42A.03.070 Late Payments**

Unless the Lease expressly provides otherwise, if any rents payable under the Lease are not received within ten (10) days after becoming due, interest at the rate of 18 percent per annum will accrue and become due and payable from the date such rentals are due until such payment is received by the Nation. The Lease shall identify any additional late payment charges. Unless the Lease expressly provides otherwise, interest charges and late payment charges shall apply in the absence of any specific notice to the Lessee from the Nation, and the failure to pay such amount shall be treated as a breach of the Lease.

#### **42A.03.080 Land Descriptions**

Leases shall contain an accurate and detailed description of the leased premises including adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems, physical location (including an address, if applicable), existing improvements, existing utilities, and square footage. Such description may include renderings, architectural drawings, or other schematics, as appropriate. The Leasing Authority, in its discretion, shall determine what is appropriate for the Lessee to supply under this Section.

#### **42A.03.090 Appraisal and Market Analysis**

(a) Every Lease shall have a Fair Annual Lease Value determination calculated in one of the following ways:

(1) The Fair Annual Lease Value may be determined by an appraisal, market analysis, or other appropriate valuation method as determined by the Leasing Authority, 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 Leasing

Authority and deemed to be in the Best Interest of the Nation; or

(2) The Fair Annual Lease Value may be determined by an appraisal performed by a licensed appraiser utilizing the Uniform Standards of Professional Appraisal Practice or another commonly accepted method of appraisal.

#### **42A.03.100 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, market analysis, or other method set forth in LCL §42A.03.090, except as follows:

(1) The Lease is in the Development Period;

(2) The Nation is providing an incentive for a business to locate on Lummi Nation Trust Land, and must provide Lease concessions, lease improvement credits, and/or lease abatements to attract such business;

(3) The Nation determines that negotiated Lease payments of less than Fair Annual Lease Value such as a Nominal Rental or a Nominal Compensation are in the Best Interest of the Nation; or

(4) The Lessee is an instrumentality or business entity of the Nation.

(b) Rent under a Lease may be structured as a fixed amount, as a fixed amount plus a percentage of gross receipts (e.g., if the Lessee is a business located in a shopping center or mall), as a percentage of gross receipts or based on a market indicator, or in such other manner as may be approved by the Leasing Authority.

(c) The Lease may be structured to allow for rental rate adjustments. It shall specify how any adjustments will be made, who will make such adjustments, when the adjustments will go into effect, and how disputes related to rental rates shall be resolved.

(d) A Lease may be amended to allow for rental rate adjustments.

(e) A Lessee may also be required to pay additional fees, taxes, and assessments associated with the use of the land and those

payments shall be made to the LIBC Accounting Department.

#### **42A.03.110 Insurance**

(a) Unless waived pursuant to Subsection (b) below, a Lessee shall provide proof of insurance necessary to protect the interests of the Lessor and in amounts sufficient to protect all insurable improvements on the premises. The insurance may include, but is not limited to, property, liability and casualty insurance, or other insurance as specified in the Lease. The Nation, Lessor and the United States must be identified as additional insured parties in all policies.

(b) The Nation may waive the insurance requirements, or reduce the amount of insurance, if the waiver is in the Best Interest of the Nation, provided, however, that the waiver may be unilaterally revoked by the Nation at any time the waiver is determined to no longer be in the Best Interests of the Nation. Upon such revocation, the Nation shall notify the Lessee in writing and indicate the type and level of insurance protection that has been determined to be adequate to protect insurable improvements on the leased premises. The Nation shall maintain written records of waivers and revocations.

#### **42A.03.120 Performance Bond**

(a) Unless waived pursuant to Subsection (b) below, Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure its contractual obligations under the Lease. Such bond may be called upon to guarantee:

(1) The annual rental payment;

(2) The estimated development and construction cost of improvements; and

(3) Any additional amount necessary to ensure compliance with the Lease.

(b) The Nation may waive the bond requirement, or reduce the amount of the performance bond, if doing so is determined to be in the Best Interest of the Nation, provided, however that the waiver may be unilaterally revoked by the Nation at any time if the waiver is determined to no longer be in the Best Interest of the Nation. Upon such revocation, the Nation shall notify the Lessee

in writing and indicate the type and level of performance bond that has been determined to be adequate to secure the Lessee's contractual obligations.

(c) A performance bond may only be provided 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 bonds issued by a company approved by the U.S. Department of the Treasury.

#### **42A.03.130 Improvements**

(a) Unless the Nation waives some or all of the requirements of this Section because it is in the best interests of the Nation, a Lease shall require the Lessee to exercise due diligence and no less than good faith efforts to complete the construction of any improvements within the schedule specified in the Lease.

(b) 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 constructed by the Lessee; and
- (2) a general schedule for construction of the improvements, including dates for commencement and completion of construction.

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

Modified construction plans or schedule, when approved by both parties, shall become a modified exhibit to the Lease.

(d) Improvements to the premises shall become the property of the Nation unless otherwise provided in the Lease. The Lease may provide for Lessee ownership of the improvements and may allow the Lessee to sell its interest in the improvements to the Nation or such other person or entity as may be authorized under the Lease, so long as the sale is consistent with all requirements of this Chapter and applicable law.

(e) If improvements will be removed, and the Lease does not specify the maximum amount of time allowed for removal, the maximum time allowed shall be 120 days from the expiration, termination, or cancellation of the Lease. Unless expressly otherwise provided in the Lease, a Lessee obligated to remove improvements shall be obligated to leave the leased premises in good order and condition, repair any damage caused by the removal of the Improvements, remove any and all debris from the leased property, and remove any and all Lessee property from the leased premises.

(f) Improvements may be subject to taxation by the Nation, subject to limitations provided in the Lease.

(g) Failure of the Lessee to comply with the requirements of this Section shall be a breach of the Lease and may lead to cancellation.

#### **42A.03.140 Subleases, Assignments, Amendments and Mortgages**

(a) Subleases, Assignments, amendments or mortgages of any Lease shall only be effective with the written approval of the Nation and Lessee, unless otherwise provided herein or in the Lease.

(b) Leases may authorize Subleases or Assignments, in whole or in part, without approval from the Nation, provided a copy of the Sublease or Assignment is promptly provided to the Leasing Authority and the following conditions, where applicable, are met and stated in the Lease:

- (1) There is no existing event of default by the Lessee under the Lease or violations of

this Title or other applicable laws or regulations;

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

(3) The proposed sublessee or assignee submits information adequate to allow the Leasing Authority to assess the proposed sublessee's or assignee's financial and other capability to undertake the Lease obligations; and

(4) Upon sublease or assignment, the sublessor or assignor shall not be relieved or released from its obligations under the Lease unless otherwise provided in the Lease.

This Subsection in no way relieves the parties from carrying out their duties under the Lease, which may contain additional restrictions and conditions.

(c) The Lease may authorize, subject to limitations, the Lessee to grant a Leasehold Mortgage for the purpose of financing to develop and improve the leased premises. At no time may a direct encumbrance on Lummi Nation Trust Land be allowed. Only a Lessee's leasehold interest may be encumbered.

(d) If a sale or foreclosure of the Lessee's leasehold interest occurs, the leasehold mortgagee may assign the Lease, subject to the Nation's approval, provided the assignee agrees in writing to be bound by all the terms and conditions of the Lease. The Lease may authorize such Assignment, in whole or in part, without approval from the Nation, provided that the requirements of Subsection (b) are met.

(e) Subleases shall contain adequate legal descriptions of the land on which they are located and descriptions of the location and square footage of the space being subleased within any building and may include renderings, architectural drawings or other schematics to illustrate the location of the space.

#### **42A.03.150 Environmental Review**

(a) Environmental Review Required. The Leasing Authority shall assign an

Environmental Reviewer to complete the review process under this Section. Unless an exemption applies or a Lease is not otherwise subject to Environmental Review, no Lease shall be approved until the Environmental Review process is complete. Leases approved and executed without compliance with this Section shall be null and void. Since no federal action is involved in the execution of Leases under this Title, the provisions of the National Environmental Policy Act of 1969, 42 U.S.C. 4311 et seq. ("NEPA") do not apply.

(b) Threshold Determination. Within (10) business days following the submission of a complete leasing application, as determined by the Leasing Authority, the Environmental Reviewer will make a threshold determination as follows:

(1) Leases Not Subject to Environmental Review. If the Environmental Reviewer determines that the Leasing Decision by its nature would not have a Significant Effect on the Environment, the Leasing Decision is exempt from additional requirements of the Environmental Review.

(2) Leases Subject to Environmental Review. If the Environmental Reviewer determines that the Leasing Decision could reasonably be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review.

(3) Exemption for Leases in Gaming Facility. Leasing Decisions involving Leases proposing use of space within the footprint of the Gaming Facility as that term is defined in the Compact shall be exempt from the additional requirements of Environmental Review and the Nation shall not be required to prepare a TLEIS. For purposes of this subsection, "Compact" means the tribal-state compact entered into between the Nation and the State of Washington and approved by the Secretary, as amended, governing the conduct of class III gaming activities by the Tribe pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. 2710(d)(1)(C).

(4) Existing Business Sites. Approvals of Leases for an existing business site,

including any associated existing improvements, existing access roads and utilities are exempt from the additional requirements of Environmental Review and the Nation shall not be required to prepare a TLEIS. Exemptions under this category are granted when a previous Environmental Review was completed for the previous Lease and the site and impacts associated with a current Leasing Decision have not substantially changed.

(c) Action on Leasing Decision Subject to Completion of Environmental Review. If the Environmental Reviewer determines that the Leasing Decision is subject to Environmental Review, the Nation may not consider the Leasing Decision until the Environmental Reviewer closes the Environmental Review in accordance with this Section.

Upon request of the Lessee, the Leasing Authority may review the proposed Lease after negotiation by the parties, before or during preparation of the Environmental Review documentation. Within sixty (60) days of receiving the proposed lease, the Leasing Authority will provide an acknowledgement of the terms of the lease and identify any provisions that, based on this acknowledgment review, would justify disapproval of the lease, pending results of the Environmental Review.

(d) Earlier or Concurrent Tribal and/or Federal Environmental Review Determinations.

(1) If a Leasing Decision pertains to an existing Lease that has undergone an earlier or a concurrent Environmental Review pursuant to this Title, Title 15 of the Lummi Code of Laws, or a federal environmental review under federal law, the Lessee shall submit those earlier or concurrent documents as part of the Environmental Review.

(2) As early in the process as possible, the Environmental Reviewer shall review the earlier or concurrent Environmental Review documents and assess whether they sufficiently evaluate the impacts of the proposed Leasing Decision as required by this Title. If the impacts were not evaluated sufficiently to meet the standards of this Title, the Lessee may obtain a

compliance update or amendment from the Tribal department or federal department that has regulatory responsibility for the relevant resource. If the impacts associated with the Leasing Decision were adequately evaluated in the earlier or concurrent documents to meet the requirements of this Title, the Environmental Reviewer may determine that the Environmental Review required under this Title is complete.

(e) Environmental Review. Unless an exemption applies, an earlier or concurrent Environmental Review meets the requires of this Title, or a Lease is not otherwise subject to the Environmental Review, then, before the execution of the Lease, the Nation shall cause to be prepared a comprehensive and adequate TLEIS, analyzing the potentially significant effects of the proposed action on the environment. However; information or data which is relevant to such a TLEIS and is a matter of public record or is generally available to the public need not be repeated in its entirety in the TLEIS, 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 TLEIS shall be indicated, and that the source thereof shall be reasonably available for inspection at a public place or public building.

The TLEIS shall provide detailed information about the Significant Effect on the Environment which the proposed Lease is likely to have, and shall include a detailed statement setting forth all of the following:

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

(2) All Significant Effects on the Environment from the proposed Lease.

(3) In a separate section setting forth:

(A) Any Significant Effect on the Environment that cannot be avoided if the Lease is executed;

(B) Any Significant Effect on the Environment that would be irreversible if the Lease is executed; and

(C) Any mitigation measures or a Restoration and Reclamation Plan proposed, recommended, or required.

(4) The TLEIS shall also contain a statement indicating the reasons for determining whether the various effects, if any, of the Lease on the environment located outside of the exterior boundaries of the Reservation or the exterior boundaries of Lummi Nation Trust Lands located outside of the Reservation, are not significant and consequently have not been discussed in detail in the TLEIS. In the TLEIS, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term, long-term, and cumulative effects.

(5) The Lease application process shall be suspended until the Draft TLEIS is complete.

(f) Notice of Completion of Draft TLEIS.

(1) By the close of the next business day after a Draft TLEIS is complete, the Environmental Reviewer shall file a copy of the draft with the Leasing Authority. The Leasing Authority shall prepare a public notice entitled "Notice of Completion" which shall include all of the following information:

(A) A brief description of the project;

(B) The proposed location of the project;

(C) An address where copies of the draft TLEIS are available;

(D) Notice of a period of at least thirty (30) days during which the Leasing Authority will receive comments on the draft TLEIS;

(E) The deadline to submit written comments, including instructions on how, where, and to whom comments should be submitted; and

(F) Notice that all comments received within the comment period will be

available for review on request at the LIBC Administration Building, which is open to the public during regular business hours.

(2) To satisfy the requirement of public notice and opportunity for comment under the HEARTH Act, the Leasing Authority shall:

(A) Cause the Notice of Completion to be published in a newspaper of general circulation in the area affected by the proposed Lease;

(B) Post the Notice of Completion in conspicuous locations of the LIBC Administration Building lobby area and other such locations accessible to the public as may be designated by the Leasing Authority; and

(C) At the Leasing Authority's discretion, post the Notice of Completion and the draft TLEIS on the LIBC Planning Department website or other LIBC governmental website as designated by the Nation.

(g) Response to Public Comments. After the comment period has ended, the Leasing Authority will review all comments timely received. Prior to the approval and execution of a Lease, the Leasing Authority will provide written responses to relevant and substantive comments on any Significant Effect on the Environment arising as a result of the proposed project and proposed or recommended mitigation measures addressing such impacts.

**42A.03.160 Compliance**

(a) The Nation shall have all powers necessary and proper to enforce the terms of the Lease, subject to the terms of the Lease. These include the power to enter the leased premises with reasonable notice and at a reasonable time (or no notice in the event the Leasing Authority determines that there is an emergency) and subject to the terms of the Lease, to determine compliance with the terms of the Lease and this Chapter.

(b) Failure of the Lessee to comply with the requirements of this Chapter will be deemed a violation of the Lease and may lead to

cancellation of the Lease pursuant to this Title.

#### **42A.03.170 Defaults**

(a) Negotiated Default and Remedies. The Lease may include negotiated events of default and remedies in the event of a Lease violation, including but not limited to the power to terminate the Lease, and the manner in which the remedies may be exercised. Negotiated remedies (including termination) may apply in addition to, or instead of, the cancellation remedy available to the Nation under this Title, as specified in the Lease.

(b) Unless otherwise provided in the Lease, if the Leasing Authority determines the Lessee is in default, the Leasing Authority shall send the Lessee a written notice of default. The notice of default shall be provided by certified mail, return receipt requested, or personal delivery to the leased premises.

(c) Unless otherwise provided in the Lease, within thirty (30) days (or fifteen (15) days if the default is for failure to pay rent) after receipt of the notice of default, or mailing if receipt is rejected, taxes or other monetary default, the Lessee shall:

- (1) Cure the default and notify the Leasing Authority, in writing, that the default has been cured;
- (2) Request additional time from the Leasing Authority, in writing, to cure the default (which may or may not be granted); or
- (3) Dispute the Leasing Authority's determination, in writing, that the Lease is in default and explain why the Lease should not be cancelled.

#### **42A.03.180 Remedies and Cancellation**

(a) If the Lessee fails to cure the default within the prescribed period, subject to the provisions of the Lease, the Leasing Authority may:

- (1) Cancel the Lease pursuant to this Title;
- (2) Grant a written extension of time to cure the default;
- (3) Pursue other remedies, with the Lessee, including negotiated remedies and

execution on bonds or collection of insurance proceeds;

(4) Undertake any combination of the remedies listed above; or

(5) Undertake any other appropriate remedies, including those set forth in the Lease.

(b) Cancellation. If the Leasing Authority cancels a Lease, it shall send the Lessee a cancellation letter within a reasonable time period or as provided in the Lease. The cancellation letter shall be provided by certified mail, return receipt requested, or personal delivery to the leased premises.

(1) The cancellation letter shall:

(A) Explain the grounds for cancellation;

(B) Notify the Lessee of unpaid amounts, interest charges, late payment penalties or other appropriate charges 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) days after receipt of the cancellation letter, or mailing if receipt is rejected, or such other period as set forth in the Lease, if an appeal is not filed by that time.

(2) A cancellation shall become effective thirty-one (31) days after receipt of the cancellation letter, or mailing if receipt is rejected, or such other date as set forth in the Lease. The filing of an appeal shall not change the effective date of the cancellation.

(c) If the Leasing Authority 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.

#### **42A.03.190 Harmful or Threatening Activities**

If the Lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Leasing Authority may take

appropriate emergency action, including, without limitation, immediate cancellation of the Lease. The Leasing Authority will notify the Lessee of the cancellation by certified mail, return receipt requested, or personal delivery to the leased premises, within a reasonable time, or as provided in the Lease.

#### **42A.03.200 Abandonment**

If a Lessee abandons the premises under a Lease, the Leasing Authority may treat such abandonment as a termination of the Lease, provided that the Leasing Authority may pursue such remedies available under the Lease or this Chapter, including damages for Lease payments through the remaining term (as if abandonment and termination had not occurred) of the Lease.

#### **42A.03.210 Holdover**

If a Lessee remains in possession after the expiration, termination or cancellation of a Lease, the Leasing Authority shall treat such occupation as a trespass. The Leasing Authority shall take action to recover possession and pursue additional remedies. Such action shall be pursuant to the Lummi Nation Code of Laws.

#### **42A.03.220 Trespass**

If a person or entity occupies the premises without the Leasing Authority's approval, the Leasing Authority may pursue all appropriate remedies, which may include a civil action for unlawful detainer pursuant to Title 39 of the Lummi Code of Laws and/or referral to appropriate law enforcement for criminal trespass.

#### **42A.03.230 Complaint and Appeals Procedure**

(a) The Lessee, or another interested party whose interests could be adversely affected, who has reasonable grounds to believe that a determination by the Nation does not comply with this Chapter, may file a complaint with the Leasing Authority.

(b) The Leasing Authority shall make reasonable efforts to resolve the complaint informally, including, but not limited to, scheduling a meeting with the Lessee or interested party for such purpose. Within thirty (30) days of receiving the written

complaint, the Leasing Authority shall reduce to writing that:

(1) the parties reached a resolution to the complaint and it is signed by the Leasing Authority and the Lessee or interested party, or

(2) no informal resolution was reached.

(c) If informal resolution of the complaint was unsuccessful, the Lessee, or another interested party whose interests could be adversely affected, may appeal a determination of the Nation. Appeals under this Chapter are limited to determinations by the Nation regarding approved Leases and no other appeals shall be authorized.

(d) Unless an alternate appeals process is provided in the Lease, the appeal shall be filed with the Lummi Tribal Court (not the Lummi Court of Appeals).

(e) The process for filing an appeal shall be as follows:

(1) A written, signed appeal must be filed within fourteen (14) days after Leasing Authority issues a written outcome of the informal resolution;

(2) The appeal must describe in reasonable detail:

(A) a description of the alleged noncompliance with this Title which is the subject of the appeal; and

(B) the remedy being sought.

(3) The appeal must be served on the Nation, by and through the Reservation Attorney, unless another party for service is identified in the Lease, and proof of service must be filed with the Lummi Tribal Court.

(c) The Clerk of the Court shall set a hearing within thirty (30) days following the date of service.

(d) At the hearing, the Lessee or interested party and the Nation shall be provided reasonable opportunity to admit documentary evidence, offer testimony, cross-examine the witness(es) of the other party, and to make arguments of law.

(e) The Judge shall review whether the Nation's 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 Judge shall provide written findings to the parties within fourteen (14) days following the close of the hearing.

(f) The decision of the Lummi Tribal Court shall be final and may not be appealed to the Lummi Court of Appeals.

(g) Only upon exhaustion of tribal remedies as provided in this Section, may a Lessee or interested party seek BIA review of an appeal regarding the Nation's compliance with this Chapter in accordance with the HEARTH Act.

(h) This Section is not intended to, nor does it create any rights whatsoever to appeal the Nation's decision declining to enter into a Lease with individuals or entities seeking the use of Lummi Nation Trust Lands. There is no individual right to use Lummi Nation Trust Lands prior to obtaining a Lease approved pursuant to this Title or federal law.

#### **42A.03.240 Appeal Bonds**

(a) If a Lessee appeals a final Lease determination of the Nation to cancel or terminate the Lease and a stay of enforcement is requested, an appeal bond must be filed concurrently with the appeal.

(b) The appeal bond shall protect the party whose remedy has been stayed from all financial losses that may occur as a result of the appeal. Appeal bonds shall not be separately appealed, but may be contested during the cancellation or termination appeal.

### **Chapter 42A.04 Agricultural Leases**

[Reserved]

### **Chapter 42A.05 Taxes and Fees**

#### **42A.05.010 State Taxation**

(a) Subject only to applicable provisions of Lummi Nation or federal law, no fee, tax, assessment, levy or charge imposed by a State or political subdivision of a State shall apply

to any of the following leases executed under this Title:

(1) Permanent improvements on land leased under a Lease;

(2) Activities under a Lease conducted on the leased premises; or

(3) The leasehold or possessory interest under a Lease.

(b) This Section shall prevent state taxation to the full extent that federal law would prevent taxation had the lease been approved directly by the BIA.

(c) The Nation may, in its sole discretion, exercise its inherent governmental authority to tax or impose fees or charges related to any of the rights, interest or activities cited in Section (a) above.

(d) Nothing in this Section shall be interpreted to prohibit or otherwise limit the Nation's ability to enter agreements with state or local governments.

#### **42A.05.020 Administrative Fees**

(a) The Nation may charge reasonable administrative fees to:

(1) Recover the Nation's costs associated with processing an application for a Lease, whether or not the application is approved; and

(2) For issuing a Lease, Sublease, Assignment, amendment, Leasehold Mortgage, or other administrative transaction.

(b) Payments shall be made to the LIBC Accounting Department.

### **Chapter 42A.06 General Provisions**

#### **42A.06.010 Lease Management**

(a) Whenever a responsibility or authority is granted under this Title to the Lummi Nation, the LIBC shall be vested with that responsibility or authority until such time as it may, in a duly enacted resolution, delegate that responsibility to such qualified LIBC employees, agencies, or departments as the LIBC determines are appropriate to hold and

exercise that responsibility or authority. When making delegation of responsibility or authority under this Section, the LIBC may impose such deadlines or conditions on the exercise of responsibility or authority as may further the purposes of this Title and the best interests of the Nation.

(b) The LIBC Planning Department, or other individual or entity as designated by the Nation, is authorized to institute regulations governing Leasing policies and procedures as deemed appropriate to implement the provisions of this Title. All such regulations shall be consistent with the provisions of this Title.

#### **42A.06.020 Applicable Law**

(a) Except where otherwise required by federal law or as agreed to in the Lease pursuant to this Title, the Lummi Code of Laws shall govern the interpretation, implementation, and management of all Leases approved under this Title.

(b) Unless explicitly prohibited by the laws of the Lummi Nation or federal law, the parties to a Lease under this Title may agree to subject a Lease to a provision of state or local law or regulation in the absence of an applicable Lummi or federal law if:

- (1) the Lease includes a specific provision to that effect;
- (2) the Nation expressly agrees that the Lease will be subject to the state or local law cited in such provision; and
- (3) the Lease clarifies that such incorporation will only be in effect during the term of the Lease and will otherwise not apply to the Nation, any of its entities, enterprises, instrumentalities, agencies, organizations, departments, tribally owned corporations, or political subdivisions, or its trust or reservation lands, except for the Lease premises as specifically provided.

#### **42A.06.030 Sovereign Immunity**

Nothing in this Title or any Lease executed under this Title shall be deemed, construed, interpreted or implied to have waived, or authorized the waiver of, the sovereign immunity of the Nation or any of its any of its entities, enterprises, instrumentalities,

agencies, organizations, departments, tribally owned corporations, or political subdivisions, officers, agents, or employees unless such waiver is explicitly granted in writing by the Nation in accordance with Title 1 of the Lummi Code of Laws.

#### **42A.06.040 Severability**

If any paragraph, section, or provision of this Title shall be declared invalid by a court of competent jurisdiction for any reason, that paragraph, section, or provision shall be severed from the remainder of this Title and the validity of the remainder of this Title shall not be affected by such decision.

#### **42A.06.050 Effective Date**

This Title shall take effect when it is approved by the BIA pursuant to the HEARTH Act, in writing, after its adoption by the Nation in a duly enacted resolution.

#### **42A.06.060 Amendment**

If major substantive amendments are made to this Title subsequent to the initial effective date, those amendments shall only become effective when approved by the BIA in writing. Minor technical amendments may be made without BIA approval.