

**NISQUALLY INDIAN TRIBE
TRIBAL CODE
TITLE 23 - BUSINESS LEASE CODE**



TITLE 23 – BUSINESS LEASE CODE

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Chapter I
General Provisions

Sections:

Section 23.01.01 Name of Title

Section 23.01.02 Definitions

Section 23.01.03 Authority and Delegation

Section 23.01.04 Purposes

Section 23.01.05 Applicability of Title

Section 23.01.01 Name of Title

This Title shall be known and cited as the Business Lease Code of the Nisqually Indian Tribe.

Section 23.01.02 Definitions

As used in this Title, the capitalized terms set forth below shall have the following meanings:

- A. "Assignment" means an agreement between a Lessee or Sublessee, as the assignor, and an assignee whereby the assignee acquires all or some of the Lessee's or Sublessee's rights and assumes all or some of the Lessee's or Sublessee's obligations under a Lease or Sublease.
- B. "Best Interest of the Tribe" means the balancing of interests in order to attain the highest Tribal economic income, provide incentives to increase Tribal economic development, preserve and enhance the value of Tribal Trust Land and Tribal Land, increase employment and jobs on those lands and preserve the sovereignty of the Tribe.
- C. "BIA" means the Bureau of Indian Affairs, United States Department of the Interior, and includes, where applicable, the BIA Land Titles and Records Office ("LTRO").
- D. "CEO" means the Chief Executive Officer of the Tribe.
- E. "Environmental Review Process" means the process for conducting an environmental review, pursuant to the provisions of Chapter V of this Title, to assess what impact a proposed Lease or Lease amendment, and any associated development, would have on the environment, if any, and the degree of significance of any such potential impacts.
- F. "Environmental Reviewer" means any Tribal official or employee, or an outside consultant, designated by Tribal Council resolution to conduct environmental reviews and assessments pursuant to Chapter V of this Title.
- G. "Executing Official" means the Tribal government official or employee designated by Tribal Council resolution to execute a Lease or other Lease Document on behalf of the Tribe.

- H. “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 subject Lease including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations.
- I. “Holdover” means circumstances in which a Lessee remains in possession of the Leased Premises after the Lease term expires.
- J. “Interested Party” means any person or entity who can demonstrate that their legitimate interests will be adversely affected in a direct and substantial manner by a Leasing Decision.
- K. “Lease” means a written agreement between the Tribe as Lessor and a Lessee (i) which is of a type set forth in Section 23.01.05A hereinbelow, whereby the Lessee is granted a right to possess Tribal Trust Land or Tribal Land for a specified purpose and duration in return for a specified rent and/or other consideration and (ii) which is not of a type set forth in Section 23.01.05B hereinbelow.
- L. “Lease Documents” means a Lease, Lease amendment, Sublease, Sublease amendment, Leasehold Mortgage, Subleasehold Mortgage or an Assignment.
- M. “Leased Premises” means the Tribal Trust Land or Tribal Land subject to a Lease.
- N. “Leasehold Mortgage” means a mortgage, deed of trust or other instrument that pledges a Lessee’s leasehold interest in Tribal Trust Land, Tribal Land and/or related rights and improvements as security for debt or other obligations owed by the Lessee to a lender or other mortgagee.
- O. “Leasing Decision” means the following types of Lease transactions that might be acted on by the Tribe: Lease issuance and Lease amendment.
- P. “Leasing Officer” means the Tribal government official or employee designated, pursuant to Tribal Council resolution, as the Leasing Officer for purposes of this Title 23 or, if the Tribal Council has not made such designation pursuant to resolution, the CEO.
- Q. “Lessee” means a natural person or entity that has a legal right to possess Tribal Trust Land or Tribal Land under the terms of a Lease and may include any Tribal entity, such as a Tribally-chartered corporation.
- R. “Lessor” means the Tribe, in its capacity as grantor of the right to possess Tribal Trust Land or Tribal Land under the terms of a Lease.
- S. “LTRO” means the Land Titles and Records Office of the BIA for the Northwest Region located in Portland, OR.
- T. “Office” means the Office of the Leasing Officer.

- U. “Public,” for purposes of the Environmental Review Process, means an Interested Party.
- V. “Secretary” or “Secretarial” means or refers to the United States Secretary of the Interior, or the Secretary’s authorized delegate.
- W. “Significant Effect on the Environment” means a substantial, or potentially substantial, adverse change in the environment, including land, air, water, minerals, flora, fauna, ambient noise, cultural areas and objects of historic, cultural or aesthetic significance.
- X. “Sublease” means a written agreement by which a Lessee, as the Sublessor, grants to an individual or entity, as the Sublessee, a right to possession of Tribal Trust Land or Tribal Land no greater than that held by the Lessee under a Lease.
- Y. “Subleasehold Mortgage” means a mortgage, deed of trust or other instrument that pledge’s a Sublessee’s subleasehold interest in Tribal Trust Land, Tribal Land and/or related rights and improvements as security for debt or other obligations owed by the Sublessee to a lender or other mortgagee.
- Z. “Sublessee” means a natural person or entity that has a right to possess Tribal Trust Land or Tribal Land under the terms of a Sublease.
- AA. “Sublessor” means a natural person or entity that grants the right to possess Tribal Trust Land or Tribal Land under the terms of a Sublease.
- BB. “TEPA” means Title 14 (Environment and Natural Resources) of the Nisqually Tribal Code.
- CC. “Tribal” or “Tribe” refers to or means the Nisqually Indian Tribe.
- DD. “Tribal Council” or “Council” means the Nisqually Tribal Council, duly-elected pursuant to the provisions of the Tribal Constitution.
- EE. “Tribal Land” means any tract in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under Section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C 477).
- FF. “Tribal Trust Land” or “Trust or Restricted Land” means any tract of land held in Trust or Restricted Status, whether located within or outside the boundaries of the Nisqually Indian Reservation.
- GG. “Trust or Restricted Status” means (i) that the United States holds title to the tract in trust for the benefit of the Tribe, or (ii) that the Tribe holds 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 limitations in federal law.

Section 23.01.03 Authority and Delegation

This Title has been enacted by the Tribal Council pursuant to the powers vested in it under the Tribal Constitution, Article VI, Section 1. The Council hereby delegates to the Leasing Officer the authority and power to administer Leases of Tribal Trust Land and Tribal Land; provided that, any such Lease or amendment thereto, as well as any additional Lease Documents, that require Tribal approval or consent pursuant to the terms of a Lease or this Title, shall be approved pursuant to resolution of the Tribal Council prior to execution by the Tribe in order to be effective. The Leasing Officer shall take all necessary actions to administer such Leases and other Lease Documents in accordance with the provisions thereof and this Title; provided that, all final decisions on whether a Lease Document shall be approved and/or issued by the Tribe shall be made by the Tribal Council.

Section 23.01.04 Purposes

The purposes of this Title are to:

1. Implement the authority of the Tribe to issue, approve, administer and enforce Leases and establish streamlined procedures for environmental review in connection therewith;
2. Promote Tribal sovereignty and self-determination through enhanced economic self-sufficiency arising from increased business activity and employment on Tribal Trust Land and Tribal Land; and
3. Implement the relevant provisions of the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”) for the benefit of the Tribe.

Section 23.01.05 Applicability of Title

- A. Except as otherwise provided in Section 23.01.05B, this Title shall apply to all Leases of Tribal Trust Land and Tribal Land pursuant to the HEARTH Act, including the following:
 1. Leases for business purposes, excluding wind and solar resource leases (commonly referred to as “WSR Leases”) and wind energy evaluation leases (commonly referred to as “WEELs”);
 2. Leases for religious, educational, recreational, cultural or other public purposes;
 3. Commercial or industrial Leases for retail, office, manufacturing, storage, biomass, waste-to-energy and other business purposes; and

4. If for any of the purposes set forth in subparts (1) – (3) of this Section 23.01.05A, ground Leases (i.e. a Lease of undeveloped land); Leases of developed land (i.e. a Lease of the land, together with improvements located and/or to be constructed thereon); space Leases (i.e. a Lease of floor space within an existing facility or facility to be constructed); facility Leases (i.e. a Lease of an existing structure or other improvement to be constructed), which may include associated infrastructure and land for parking, storage, access and other rights per the terms of the subject Lease; Leases for the construction of single-purpose or mixed-use projects designed for use by any number of Lessees or occupants; and Leases for any combination of the foregoing.

B. This Title shall not apply to the following:

1. WSR Leases and WEELs, as referenced in Section 23.01.05A(1);
2. Agricultural Leases, defined to mean a Lease of land, which land constitutes Indian land or Government land suited or used for the production of crops, livestock or other agricultural products, or Indian land suited or used for a business that supports the surrounding agricultural community, for farming and/or grazing purposes;
3. Leases for residential purposes;
4. Leases for the exploration, development or extraction of mineral resources;
5. Leases of individually-owned Indian lands or fractionated interests;
6. Leases of land owned by the Tribe in fee simple; or
7. Leases of land that is not Tribal Trust Land or Tribal Land.

C. This Title shall apply to Leases of any and all lands that become Tribal Trust Land or Tribal Land after the effective date of this Title, as well as to Tribal Trust Land and Tribal Land existing as of the effective date of this Title; Provided That, this Title shall not apply to any leases that have been executed by the parties and approved by the BIA pursuant to 25 C.F.R. Part 162 prior to the date that this Title becomes effective in accordance with federal law.

D. Nothing in this Title shall be construed to affect the terms and conditions of Leases that were in effect before this Title became effective.

E. After the Secretary approves this Title under 25 U.S.C. §415, approval of a Lease, or any other Lease Document, by the Secretary or other federal government authority shall not be required, unless the Secretary rescinds approval of this Title and reassumes responsibility for such approval. Instead, all Leases and other Lease Documents shall be

subject only to the approval of the Tribe as and to the extent provided in a Lease Document and/or in this Title.

Chapter II
Requirements for Business Leases

Sections:

- Section 23.02.01 Lease Terms and Conditions**
- Section 23.02.02 Commencement, Duration and Renewal**
- Section 23.02.03 Obtaining a Lease**
- Section 23.02.04 Approval of Lease Documents**
- Section 23.02.05 Description of Leased Premises**
- Section 23.02.06 Appraisal; Local Studies**
- Section 23.02.07 Fair Annual Lease Value**
- Section 23.02.08 Cultural and Historical Review**
- Section 23.02.09 Insurance**
- Section 23.02.10 Performance Bond**
- Section 23.02.11 Improvements**
- Section 23.02.12 Subleases, Assignments and Encumbrances**

Section 23.02.01 Lease Terms and Conditions

Leases shall be governed by the terms and conditions set forth therein. The terms and conditions may be modified only with the written approval of the parties. The Lessee is responsible for understanding Lease terms and conditions utilizing its own consultants and advisors. Neither the Leasing Officer nor any person in the Office is authorized to give a potential Lessee legal advice regarding the interpretation of the terms and conditions included in a Lease.

Section 23.02.02 Commencement, Duration and Renewal

- A. No Lease shall be approved more than one (1) year prior to its commencement. The initial term of the Lease shall not be more than twenty-five (25) years, except that a Lease may include one or more options to renew; Provided That, a single option to renew may not exceed twenty-five (25) years in duration and the total Lease duration shall not exceed seventy-five (75) years in duration. For Leases that do not contain an automatic renewal provision, the Lessee shall give written notice to the Tribe of its election to renew the Lease within the time period specified in the Lease for such notice or, if no such time period is so specified then, no later than ninety (90) days before the Lease is due to expire.
- B. If the Lease provides for an option to renew, the Lease must specify:
 - 1. The time within which the option may be exercised, or that the option is automatically effective;
 - 2. That notice of the renewal will be submitted to the Tribe, in writing, unless the Lease provides for automatic renewal;

3. Any negotiated additional consideration that will be due upon the start of the renewal term; and
4. Any other negotiated conditions for renewal, such as the Lessee must not be in violation of the Lease at the time of renewal.

Section 23.02.03 Obtaining a Lease

A. All applicants for a proposed Lease shall submit to the Office the following documents:

1. Evidence of compliance with the Environmental Review Process; and
2. Other relevant documents reasonably requested by the Office, such as financial statements, proof of financing for proposed improvements and evidence of business and technical capabilities.

B. All Leases shall contain the following provisions:

1. A BIA tract number, a parcel number, a physical address, a legal description or other identification of the physical location of the Leased Premises subject to the Lease that is sufficient for BIA LTRO to identify the Leased Premises and record the Lease;
2. The purpose of the Lease and the authorized uses of the Leased Premises;
3. The parties to the Lease;
4. The effective date of the Lease and the term of the Lease, including any options for renewal;
5. An indemnification and hold-harmless provision in favor of the United States and the Tribe, as Lessor;
6. Payment requirements and how late payments will be addressed by the Tribe;
7. Any insurance and bonding requirements as set forth in Sections 23.02.09 and 23.02.10 of this Title;
8. Any negotiated restoration and/or reclamation implementation plan at the expiration of the Lease;
9. Any action required, such as a mitigation plan, as a result of the Environmental Review Process; and
10. If permanent improvements will be constructed, each parties' responsibility for constructing, operating and maintaining those improvements, and, if applicable,

each parties' responsibility for removal of the improvements at the end of the Lease.

In addition, if the Leased Premises are within an irrigation project or drainage district, the Lease shall provide that the Lessee must pay all operation and maintenance charges during the Lease term.

- C. A Lease may include provisions to give Indian preference in hiring for employment purposes.
- D. The Office is responsible for maintaining the records of all Leases. It shall cause Lease Documents, excluding residential Subleases, to be submitted for recordation with the following office:

Land Titles and Records Office (LTRO)
United States Department of the Interior
Bureau of Indian Affairs
Northwest Regional Office
911 N.E. 11th Ave.
Portland, OR 97232

Section 23.02.04 Approval of Lease Documents

Whenever a Lease Document requires the approval or consent of the Tribe, and regardless of whether such Tribal approval or consent is required by the Lease Document itself or this Title, such approval or consent may be given and shall be conclusively evidenced only by (i) a written resolution of the Tribal Council and/or (ii) an instrument, which may include a Lease Document, executed by a Tribal official authorized to sign on behalf of the Tribe pursuant to a written resolution of the Tribal Council. The Tribe may approve or consent to a Lease Document within the time period deemed appropriate by the Tribal Council or authorized Tribal official.

Section 23.02.05 Description of Leased Premises

Leases shall contain an accurate and detailed description of the Leased Premises that is sufficient for BIA LTRO to identify the Leased Premises and record the Lease, which may include site surveys, legal descriptions, physical location (including an address, if applicable) and/or square footage. Such description may include renderings, architectural drawings or other schematics, as appropriate.

Section 23.02.06 Appraisal; Local Studies

- A. The Fair Annual Lease Value may be determined by an appraisal or equivalent procedure performed by the Office, or its designee, 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 Office and deemed to be in the Best Interest of the Tribe. If this option is selected by the Office, an appraisal/local studies log reporting the

methods of appraisal and value of the Tribal Trust Land or Tribal Land, and any improvements or facilities associated with the Leased Premises, shall be maintained in the Lease records of the Office.

- B. Alternatively, 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. If this option is selected by the Office, an appraisal log describing the method of appraisal and value of the Tribal Trust Land or Tribal Land, and any improvements or facilities associated with the Leased Premises, shall be maintained in the Lease records of the Office.

Section 23.02.07 Fair Annual Lease Value

- A. No Lease shall be approved for less than the present Fair Annual Lease Value except as follows:
 - 1. The Tribe is providing an incentive for a business to locate on Tribal Trust Lands or Tribal Lands and to facilitate this goal the Tribe negotiates Lease payments of less than Fair Annual Lease Value to attract such business; or
 - 2. The Tribe determines that negotiated Lease payments of less than Fair Annual Lease Value are in the Best Interest of the Tribe.
- B. A Lease may provide for flat rate Lease payments, Lease payments based on a percentage of gross receipts, a combination of the foregoing and/or other forms of Lease payments.
- C. A Lease must specify the dates on which all payments, including late charges or other penalty charges, if any, are due.
- D. A Lease must specify that the Lessee shall make payments directly to the Tribe, and that the Tribe shall maintain records of all Lease payments received sufficient to enable the Secretary to discharge the trust responsibility of the United States.
- E. Lease payments may not be made or accepted more than one (1) year in advance of the due date for a given payment.
- F. If the Lease provides for periodic review of the rental rates included in the Lease, the Lease shall specify (i) that such reviews shall occur upon expiration of each five-year period during the Lease term; (ii) when any adjustments will go into effect; (iii) who can make the adjustments, (iv) what the adjustments are based on; and (v) how to resolve disputes arising from the adjustments. When a review results in an adjustment of Lease compensation, the Tribe must consent to the adjustment unless the Lease provides otherwise. Any rental rate adjustment shall be memorialized in an amendment to the Lease.

Section 23.02.08 Cultural and Historical Review

- A. The Office shall require that a cultural and historical review of a proposed Lease site be conducted by Tribal staff prior to Tribal Council consideration of a proposed Lease.
- B. If any historic properties, archaeological resources, human remains or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the Leased Premises will cease and the Lessee will contact the Tribe. The Tribe will then facilitate compliance with applicable Federal and Tribal laws given said encounter.

Section 23.02.09 Insurance

- A. A Lessee shall provide insurance in amounts sufficient to protect insurable improvements on the Leased Premises, including any interest of the Tribe therein.
- B. The Lessee's required insurance coverage under this Section 23.02.09 may include, but is not limited to, property, liability, casualty or other insurance as specified in the Lease.
- C. The Tribe and the United States must be identified as additional insured parties in the Lessee's general liability and automobile liability insurance policies.
- D. The Leasing Officer may waive the insurance requirements if the waiver is in the Best Interest of the Tribe, provided, however, that the waiver may be unilaterally revoked by the Leasing Officer at any time if the waiver is determined to no longer be in the Best Interest of the Tribe. Upon such revocation, the Leasing Officer shall notify the Lessee and indicate the type and level of insurance protection that has been determined adequate to protect insurable improvements on the Leased Premises, which type and level of insurance shall be consistent with standard industry practice based on the subject insurable interests. The Office shall maintain written records of waivers and revocations.

Section 23.02.10 Performance Bond

- A. Unless waived by the Tribe in accordance with this Section, the Lessee shall obtain a satisfactory performance bond in an amount sufficient to secure its contractual obligations under the Lease. The obligation of the Lessee and its sureties to the Tribe pursuant to said bond will be enforceable by the United States so long as the land subject to the Lease remains in trust status. The performance bond must require the surety to provide the Tribe with advanced notice before any cancellation of the bond. Such bond may be called upon to guarantee:
 - 1. The annual Lease payments;
 - 2. The estimated development and construction cost of improvements; and/or

3. Any additional, reasonable amount necessary to ensure compliance with the Lease.
- B. The Tribe 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 Tribe. If the terms of a Lease do not require a performance bond, then the Tribe shall be deemed to have waived the bond requirement of this Section 23.02.10. The Office shall maintain written records of waivers and reductions.
- C. A performance bond may 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 United States Treasury securities; or
 4. Surety bonds issued by a company authorized to do business in the United States and approved by the U.S. Department of the Treasury.

Section 23.02.11 Improvements

- A. All Leases shall require the Lessee to exercise due diligence and best efforts to complete construction of any improvements within a reasonable time period.
- B. Lessee may construct improvements under a Lease if the Lease specifies or provides for:
1. A description of the type and location of any improvements to be built by the Lessee upon the Leased Premises; and
 2. A general schedule for construction of improvements.
- C. The Lessee shall provide the Office periodic information of its progress under the construction schedule and any actual or anticipated delays, including documentation about the nature of such delays and the anticipated date of recommencement of construction after such delay. If the construction schedule cannot be met as a result of any delays, a proposed modified construction schedule may be presented by Lessee to the Office for review. Such modified construction schedule, if approved by all parties, shall become an exhibit and/or amendment to the Lease.
- D. Improvements to the Leased Premises shall become the property of the Tribe at the end of the Lease or at the end of any renewal period of the Lease, unless otherwise provided for in the Lease.

- E. If the Lease provides that improvements are to be removed by the Lessee at the expiration or termination of a Lease or at the end of any renewal period of the Lease, the Lease shall specify (i) the maximum time allowed for such removal, and (ii) any plan for Lessee's reclamation/restoration of the site.

Section 23.02.12 Subleases, Assignments and Encumbrances

- A. Subleases, Assignments, Leasehold Mortgages and Subleasehold Mortgages shall require the prior written consent of the Tribe to be effective, except as otherwise provided below in this Section 23.02.12.
- B. Leases may authorize Subleases and Assignments, in whole or in part, without written consent from the Tribe, provided a copy of the Sublease or Assignment is submitted to the Office within ten (10) days after execution by all parties thereto and the following conditions, where applicable, are stated in the Lease and satisfied:
 - 1. There is no event of default under the Lease and the Lessee is in compliance with this Title;
 - 2. Any restrictions and/or limitations on the use of the Leased Premises under the terms of the Lease shall continue to apply to any Sublessee or assignee;
 - 3. In the case of an Assignment, the assignee (i) agrees in writing to assume all of the obligations and conditions of the Lease that are to be assigned and (ii) submits to the Office, if requested and prior to the intended effective date of the Assignment, a current financial statement showing financial ability to perform the Lease obligations as and to the same extent as the Lessee; and
 - 4. In the case of a Sublease, the Lessee shall not be relieved or released from any of its obligations under the terms of the Lease.
- C. The Lease may authorize a Leasehold Mortgage for the purpose of securing financing to develop, improve and/or operate the Leased Premises, subject to the prior written approval of the Tribe. A Subleasehold Mortgage shall not require Tribal approval unless otherwise provided in the subject Lease. An encumbrance of the beneficial interest of the Tribe or the fee interest of the United States in the Tribal Trust Land and/or Tribal Land shall not be approved or consented to by the Tribe and is prohibited as a matter of federal law.
- D. If a sale or foreclosure of the Lessee's leasehold interest under a Lease occurs and:
 - 1. The encumbrancer is also the purchaser, the encumbrancer may assign the Lease without approval of the Tribe, provided the assignee agrees, in writing, to be bound by all the terms and conditions of the Lease; or

2. If the purchaser is a party other than the encumbrancer, approval by the Tribe will be required before a Lease can be so assigned, and the purchaser shall agree, in writing, to be bound by all terms and conditions of the Lease.
- E. After the Secretary approves this Title, Subleases, Assignments, Leasehold Mortgages and Subleasehold Mortgages shall not require Secretarial or other federal government approval under 25 U.S.C. § 415 to be effective, unless the Secretary rescinds approval of this Title and reassumes responsibility for such approval. Instead, all Subleases, Assignments, Leasehold Mortgages and Subleasehold Mortgages shall be subject only to the approval of the Tribe as and to the extent provided in a Lease Documents and/or in this Chapter II.

Chapter III
Business Lease Decision Process and Lease Management

Sections:

Section 23.03.01 Lease Decision Process

Section 23.03.02 Lease Management

Section 23.03.03 Lease Payments; Related Charges

Section 23.03.04 Administrative Fees

Section 23.03.01 Lease Decision Process

- A. Upon receiving a written application or request for a Lease and supporting documentation, the Office will:
1. Make a preliminary determination if the submission contains sufficient information for the Office to proceed with reviewing it for the purpose of making a recommendation to the Tribal Council regarding a Leasing Decision. The applicant will be notified, in writing, within thirty (30) business days of receipt of the application regarding the results of this preliminary determination and, if applicable, of any required additional information that must be submitted by the applicant before processing of the application can proceed. This step in the process is a checklist review of the application's adequacy and is not part of the substantive review associated with the Leasing Decision;
 2. Once a Lease application has been determined to contain sufficient information, notify the applicant in writing that a Leasing Decision will be made after completion of the Environmental Review Process ("Decision Review Period");
 3. During the Decision Review Period and as deemed appropriate, conduct, or have conducted, all environmental, cultural, historical, archeological, financial, technical, business, legal and related reviews concerning the application and evaluate those reviews to determine if any additional information is needed from the applicant, including any plans that might be required, such as a mitigation plan, construction plan, restoration plan or similar plan. If further information is required as a result of the review process, then the applicant will be notified in writing of what additional information must be provided and the time frame for providing it ("Extended Review Period"). The Leasing Decision recommendation will then be made by the Office to the Tribal Council within fifteen (15) days from the date the additional requested information has been tendered by the applicant to the Office. If the applicant fails to respond in a timely manner to the request for additional information under this subsection, the Office, in its discretion, may deem the application to be null and void, and shall notify the applicant, in writing, to that effect;
 4. Determine if the applicant is required to implement any plans, whether as a condition precedent or as a condition subsequent, related to the proposed Lease in

question, and if so, reflect that determination in the Lease application documentation; and

5. Prior to the end of the Decision Review Period, or the Extended Review Period if applicable, in writing (i) recommend approval of the Lease to the Tribal Council, or (ii) recommend disapproval of the Lease to the Tribal Council, stating the reasons therefor. If the Lease is approved by the Tribal Council, the Office will cause duplicate original copies of the Lease, along with all attachments and exhibits, to be created and arrange the closing at a time and place convenient to the parties.
- B. The duration of the Decision Review Period and/or the Extended Review Period may be extended at any time in the discretion of the Tribal Council.

Section 23.03.02 Lease Management

- A. The Office shall manage all Leases entered into by the Tribe as and to the extent provided in this Title.
- B. The Office, the Secretary, or their respective designated representatives, may enter the Leased Premises at any reasonable time, upon reasonable notice and in accordance with any applicable notice or other requirements set forth in the Lease, in order to protect the interests of the Tribe and to determine if the Lessee is in compliance with the requirements of the Lease. If, however, all or any portion of the Leased Premises are subject to special security requirements, the person designated by the Office to inspect such premises will have obtained the required security clearances to conduct such inspections for the Tribe.
- C. If a Lease violation is found pursuant to an inspection of the Leased Premises, the Office will notify the Tribal Council. The Tribal Council will then determine what course of action the Tribe will pursue to address the violation.
- D. The Office may institute business leasing management policies and procedures consistent with this Title that employ standard real estate management practices addressing accounting, collections, monitoring and enforcement.

Section 23.03.03 Lease Payments; Related Charges

- A. The Lease must specify the acceptable method of payment. All Lease payments due under a Lease covered by this Title shall be made, unless otherwise stipulated in the Lease, to:

The Nisqually Indian Tribe
Attn: Financial Services – Business Leasing
4820 She-Nah-Num Dr. SE
Olympia, WA 98513

- B. The Lessee shall pay, when due, all other charges which may arise from the Lessee's use and/or activities upon the Leased Premises, including, but not limited to, utilities, telecommunications, solid waste disposal, security and taxes, whether due to the Tribe or otherwise.
- C. The failure to timely pay any required Lease payment amounts, fees, assessments or other costs in accordance with the terms of the Lease will constitute a Lease violation. Lease payments are due when specified in the Lease, and the Tribe is not required to give the Lessee additional notice or to provide any type of advance billing or invoice for the amount due.

Section 23.03.04 Administrative Fees

- A. Administrative fees are in addition to payments or charges specified in the Lease. The Office may charge reasonable administrative fees to: (i) recover the Tribe's costs associated with processing an application for a Lease, whether or not the application is approved, and (ii) for the Tribe's issuance, review and/or approval of any Lease Document or Lease-related matter. Specific items for which such administrative fees may be charged include the following:
 - 1. environmental, cultural and historical reviews;
 - 2. financial reviews;
 - 3. general and technical business feasibility reviews;
 - 4. architectural and engineering reviews;
 - 5. legal reviews; and
 - 6. other related charges.
- B. Before any administrative fees are imposed, the Office shall establish a schedule of administrative fees, or service charges, to be collected and said schedule shall be available for review by all prospective and existing Lessees. The amount of any such fees or service charges shall be commensurate with similar fees or charges in effect within non-Tribal jurisdictions.

Chapter IV
Business Lease Enforcement

Sections:

- Section 23.04.01 General Enforcement Powers**
- Section 23.04.02 Defaults**
- Section 23.04.03 Remedies**
- Section 23.04.04 Penalties**
- Section 23.04.05 Harmful or Threatening Activities**
- Section 23.04.06 Holdover**
- Section 23.04.07 Trespass**

Section 23.04.01 General Enforcement Powers

The Leasing Officer shall have all powers consistent with this Chapter necessary and proper to enforce a Lease in accordance with its terms. This includes the power to (i) enter the Leased Premises, subject to the limitations set out in Section 23.03.02B and (ii) make recommendations to the Tribal Council with respect to remedies available to the Tribe in the event of a default by Lessee. In all cases, the Tribal Council shall determine the Tribe's actions in the event of a default by the Lessee.

Section 23.04.02 Defaults

- A. If the Tribe determines that the Lessee is in default under the terms of the Lease, it shall send the Lessee a written notice of default. Also, if the default may result in termination of the Lease in accordance with its terms, the Tribe shall provide a copy of said notice of default to any surety of Lessee or Leasehold Mortgage holder that has provided the Office with its contact information. The notice of default may be provided by certified mail, return receipt requested.
- B. Within the time period set forth in the Lease for Lessee to cure a default or respond to a default notice or, if no such time period is set forth in the Lease, within ten (10) days of receipt of the default notice, the Lessee shall:
 - 1. Cure the default and notify the Office, in writing, that the default has been cured;
 - 2. Request additional time to cure the default; or
 - 3. Dispute the Tribe's determination, in writing, that the Lessee is in default.

Section 23.04.03 Remedies

- A. If the Lessee fails to cure the default within the applicable time period set out in Section 23.04.02B above, the Tribe shall:
 - 1. Terminate the Lease if consistent with the terms thereof;

2. Grant a written extension of time to cure the default;
 3. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
 4. Undertake any combination of the remedies listed above;
 5. Undertake any other appropriate remedies set forth in the Lease and/or otherwise permissible; and/or
 6. Request that the Secretary enforce the provisions of the Lease or cancel the Lease pursuant to the enforcement and cancellation provisions of 25 C.F.R. Part 162.
- B. If the Tribe desires to terminate a Lease due to a default thereunder, and such termination is consistent with the Lease terms, it shall send the Lessee a termination notice letter within the time period provided in the Lease or, if the Lease does not specify such time period, then, within a reasonable time period. The termination notice letter shall be sent to the Lessee by certified mail, return receipt requested. The termination notice letter shall:
1. State the grounds for termination;
 2. Notify the Lessee of unpaid rent amounts, interest charges, late payment penalties or other appropriate charges due under the terms of the Lease; and
 3. Order the Lessee to vacate the Leased Premises within thirty (30) days of receipt of the termination notice letter or, if a longer period is stated in the Lease, then within the time period set forth in the Lease.
- C. A termination shall become effective when specified by the Tribe in the termination notice letter sent to the Lessee.
- D. If the Tribe grants an extension of time to cure a default, the Lessee shall proceed diligently to perform and complete the corrective actions within the extension time period.
- E. Notwithstanding anything to the contrary in this Chapter or otherwise in this Title 23, any termination of a Lease by the Tribe shall be consistent with the terms of the Lease.

Section 23.04.04 Penalties

The Lease shall specify the rate of interest to be charged if the Lessee fails to make rent payments in a timely manner. The Lease may identify additional late payment penalties.

Section 23.04.05 Harmful or Threatening Activities

If a Lessee or other party causes or threatens to cause immediate and significant harm to the Leased Premises, or undertakes illegal activity thereon, the Tribe may take appropriate emergency action. The Lessee must comply with all applicable laws, ordinances and other legal requirements.

Section 23.04.06 Holdover

If a Lessee remains in possession after the expiration or cancellation of a Lease, the Tribe shall act to remedy the Holdover situation. The Office shall recommend to the Tribal Council that the Tribe take action to recover possession of the Leased Premises and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

Section 23.04.07 Trespass

If a person or entity occupies the Leased Premises without an approved Lease or other lawful right, the Office shall make recommendations to the Tribal Council to recover possession and pursue appropriate remedies, which may include the filing of a trespass action.

Chapter V Environmental Review Process

Sections:

- Section 23.05.01 General Requirements
- Section 23.05.02 Threshold Determination
- Section 23.05.03 Action on Leasing Decision
- Section 23.05.04 Environmental Review Process
- Section 23.05.05 Notice of Completion of Draft TLEIR
- Section 23.05.06 Response to Public Comments
- Section 23.05.07 Title 23 Controlling

Section 23.05.01 General Requirements

Unless an exemption applies under this Chapter, the Office shall not recommend a Lease for the Tribal Council's approval, and the Tribal Council shall not approve a Lease or cause a Lease to be executed, until the Environmental Review Process has been completed pursuant to this Chapter. Leases approved or executed without compliance with the Environmental Review Process shall be null and void.

Section 23.05.02 Threshold Determination

- A. Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature will have no Significant Effect on the Environment, the Leasing Decision is exempt from additional requirements of the Environmental Review Process. Any such determination shall be documented in writing and maintained in the records of the Tribe.
- B. Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to have a Significant Effect on the Environment, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.
- C. Exemption for Leases in Gaming Facility and Otherwise: Leasing Decisions involving use of space within the existing footprint of the Red Wind Casino, as well as Leasing Decisions concerning use of space within the existing footprint of improvements other than the Red Wind Casino, shall be exempt from the Environmental Review Process.

Section 23.05.03 Action on Leasing Decision

If the Environmental Reviewer determines that the Leasing Decision is subject to the Environmental Review Process, a Leasing Decision shall not be made until the Environmental Reviewer completes the Environmental Review Process.

Section 23.05.04 Environmental Review Process

- A. Unless an exemption applies, before the Leasing Decision is made, the Environmental Reviewer shall cause to be prepared a comprehensive and adequate Tribal lease environmental impact report (“TLEIR”), analyzing the potentially significant effects of the proposed action on the environment; provided, however, that information or data which is relevant to such a TLEIR that is a matter of public record or is generally available to the public, need not be repeated in its entirety in the TLEIR, 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 TLEIR shall be indicated, and that the source thereof shall be reasonably available for inspection at a Tribal facility open to the public. The TLEIR shall provide detailed information about the Significant Effect(s) on the Environment which the Lease or Lease amendment, if approved, 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 contemplated Leased Premises (the environmental setting and existing baseline conditions) as they exist at the time the notice of preparation of the report is issued;
 2. All Significant Effects on the Environment from the proposed Lease or Lease amendment; and
 3. In a separate section:
 - a. Any Significant Effect on the Environment that cannot be avoided if the Lease or Lease amendment is executed;
 - b. Any Significant Effect on the Environment that would be irreversible if the Lease or Lease amendment is executed; and
 - c. Any mitigation measures proposed, recommended, or required.
- B. In addition to the information required pursuant to subsection A. above, the TLEIR shall also contain a statement indicating the reasons for determining whether the various effects of the proposed Lease or Lease amendment on the off-reservation environment are significant and, consequently, whether those effects have been discussed in detail in the TLEIR. In the TLEIR, the direct and indirect Significant Effects on the Environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.
- C. The determination of whether the Leasing Decision will have a Significant Effect on the Environment shall be made in the context of Nisqually Tribal culture and values. Factors to be taken into consideration include the following:

1. Whether the activity will adversely affect the quantity and quality of the fish and shellfish resources of the Tribe;
2. Whether the activity will adversely affect wildlife and other natural resources of the Tribe including water quality and quantity;
3. Unique or sensitive characteristics of the geographic or hydrologic area in which the activity will take place;
4. Whether the activity may adversely affect an endangered or threatened species or its habitat;
5. Whether the activity may cause loss or destruction of cultural, historical or scientific resources;
6. Whether the activity affects the health and safety of the Tribal community;
7. Whether the effects of the activity are uncertain or involve unique or unknown risks;
8. Whether the activity may establish a precedent for future actions with significant effects;
9. The level of Tribal community support or opposition;
10. Whether the activity is related to other actions with individually insignificant but cumulatively significant impacts. If it is reasonable to anticipate a cumulatively significant impact on the environment, the activity is significant;
11. Whether the activity threatens a violation of an interlocal cooperation agreement to which the Tribe is a party, imposed for the protection of the environment; and
12. Whether the activity would violate the Constitution of the Tribe, any other law or policy of the Tribe or federal law.

Section 23.05.05 Notice of Availability of Draft TLEIR

- A. Within no less than thirty (30) days following the completion of the draft TLEIR, the Environmental Reviewer shall file a copy of the draft with the Office, which shall then prepare a Notice of Availability which shall include all of the following information:
 1. A brief description of the project;
 2. The proposed location of the project;

3. An address where copies of the draft TLEIR are available for public inspection (copies of the draft TLEIR shall be made available to the public for a copying and administrative fee); and
 4. Notice of a period of thirty (30) days during which the Tribe will receive comments on the draft TLEIR.
- B. The Office shall post the Notice of Availability on the Tribe's publicly available website and in a Tribal facility accessible to the public during normal business hours. Additionally, the Notice of Availability shall be published, once, in a newspaper of general circulation in the local community where the Tribal Trust Land or Tribal Land that is associated with the proposed Lease or Lease amendment is located. The notice shall specify that the public has thirty (30) days to submit comments on the TLEIR to the Office.

Section 23.05.06 Response to Public Comments

After the thirty (30) day comment period has ended, the Office will review all comments received from the public. Prior to the approval and execution of the Lease or Lease amendment by the Tribe, the Office will provide, or cause to be provided, responses to relevant and substantive public comments on any Significant Effect on the Environment arising as a result of the proposed project, as well as on any proposed or recommended mitigation measures addressing any such impacts. Said responses shall also be posted on the Tribe's publicly available website. Copies of all such comments and responses will be maintained in a dedicated file or filing system within the Office.

Section 23.05.07 Title 23 Controlling

In the event of a conflict between the provisions of this Title 23 and the provisions of the TEPA, the provisions of this Title 23 shall control.

Chapter VI
Complaint, Form of Complaint, Informal Resolution, Decision, Appeal

Sections:

Section 23.06.01 Complaint

Section 23.06.02 Form of Complaint

Section 23.06.03 Informal Resolution

Section 23.06.04 Decision

Section 23.06.05 Appeal

Section 23.06.01 Complaint

An Interested Party who has reasonable grounds to believe that the Tribe has failed to comply with this Title may file a complaint with the Leasing Officer under this Chapter.

Section 23.06.02 Form of Complaint

The complaint shall be in writing, signed by the Interested Party, contain a description of the alleged noncompliance with this Title and state all relief requested; Provided That, in all cases monetary relief may never be requested. The complaint shall be submitted to the Leasing Officer, who shall file stamp the date of submission and return a conformed copy to the complainant if so requested.

Section 23.06.03 Informal Resolution

The Leasing Officer shall make reasonable efforts to resolve the complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. The disposition of all complaints that are resolved through such informal process shall be reduced to writing and signed by the Leasing Officer and the Interested Party.

Section 23.06.04 Decision

If the complaint is not resolved informally, the Leasing Officer shall issue a decision on the complaint, which shall be in writing and signed by the Leasing Officer. The Leasing Officer shall cause the decision to be delivered to the Interested Party no later than thirty (30) business days after receipt of the complaint. The decision of the Leasing Officer shall constitute a final administrative decision of the Tribe.

Section 23.06.05 Appeal

In accordance with 25 U.S.C. 415(h)(8)(A), an Interested Party who has exhausted the Tribe's remedies set forth in this Chapter VI 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 Title.

Chapter VII
Miscellaneous Provisions

Sections:

- Section 23.07.01 Applicable Laws**
- Section 23.07.02 Sovereign Immunity**
- Section 23.07.03 Severability Clause**
- Section 23.07.04 Savings Clause**
- Section 23.07.05 Effective Date**

Section 23.07.01 Applicable Laws

The provisions of Tribal law and federal law generally apply to all Tribal Trust Lands and Tribal Lands.

Section 23.07.02 Sovereign Immunity

- A. Nothing in this Title is intended, nor shall be construed or interpreted, to have waived, or authorized the waiver of, the sovereign immunity of the Tribe or any of its agencies, departments, subdivisions, enterprises, corporations, officers, officials, agents or employees.
- B. The Tribe may grant a limited waiver of its sovereign immunity with respect to a Lease Document only if all of the following occurs:
 - 1. The sovereign immunity of the Tribe is expressly waived in writing within a Lease Document or a related instrument;
 - 2. Said Lease Document or related instrument has been duly authorized by written Tribal Council resolution and executed on behalf of the Tribe by a duly authorized Tribal official as specified in said Tribal Council resolution; and
 - 3. Said written express waiver identifies the party or parties that may bring suit against the Tribe.

Section 23.07.03 Severability Clause

The provisions of this Title are severable. If any part of this Title is declared invalid or unconstitutional by a court of competent jurisdiction, that finding or declaration shall not affect the remaining parts of the Title and their application to other persons or circumstances.

Section 23.07.04 Savings Clause

The repeal or amendment of this Title does not release or extinguish any liability incurred or right accruing under the Title, unless the repeal or amendment so expressly provides. This Title

shall be treated as remaining in full force and effect for the purpose of sustaining any proper action for the enforcement of such right or liability.

Section 23.07.05 Effective Date

This Title shall take effect when approved by the Secretary, in writing, after its adoption pursuant to resolution of the Tribal Council. If substantive amendments are made to this Title subsequent to its effective date, those amendments will only become effective when approved by the Secretary, in writing. Minor or technical amendments may be made to this Title by the Tribe without approval of the Secretary of the Interior.

CERTIFICATION

The undersigned hereby certify that the foregoing Title 23 (Business Lease Code) to the Nisqually Tribal Code was approved and adopted by the Nisqually Tribal Council pursuant to Resolution No. 128-2022 dated August 4, 2022.

NISQUALLY TRIBAL COUNCIL



William Frank III, Chairman



Jackie Whittington, Secretary