UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPROVAL OF

THE NAVAJO NATION
GENERAL LEASING REGULATIONS OF 2013

The attached Navajo Nation General Leasing Regulations of 2013, submitted by the Navajo Nation, Arizona, New Mexico, & Utah, and prepared in accordance with 25 U.S.C. § 415(e) Leases of restricted lands for the Navajo Nation, consisting of 25 pages and adopted by the Navajo Nation Council on November 6, 2013, are hereby approved.

Dated: 5/16/14

Assistant Secretary – Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

RESOLUTION OF THE
NAVAJO NATION COUNCIL

22nd NAVAJO NATION COUNCIL - Third Year, 2013

AN ACT

RELATING TO RESOURCES AND DEVELOPMENT AND NAABIK'ÍYÁTI'; APPROVING THE NAVAJO NATION GENERAL LEASING REGULATIONS OF 2013 AND ENACTING THE SAME AT 16 N.N.C. §2301 *ET SEQ*.

BE IT ENACTED:

Section 1. Findings and Purposes

A. Except for mineral leases, the *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), Public Law 106-568 ("Leasing Act"), authorizes the Navajo Nation to issue leases without the approval of the Secretary of the Interior. Regulations for issuance of such leases must be consistent with the Leasing Act and approved by the Secretary of the Interior.

B. The process on the Navajo Nation for agriculture, public, religious, educational, recreational and residential leases must be streamlined.

C. The review and approval of the Secretary of the Interior is not necessary for leases authorized and approved by the Navajo Nation under the Leasing Act and Navajo Nation law and regulations.

Section 2. Approving the Navajo Nation General Leasing Act of 2013

The Navajo Nation hereby approves and enacts the *Navajo Nation General Leasing Act of 2013*, as provided below. Such enactment shall be codified at 16 N.N.C. §2301 *et seq.* as follows:

Title 16. Land
Chapter 23. Navajo Nation General Leasing Regulations of 2013
Subchapter 1. General Provisions

§ 2301. Authority

The *Navajo Nation Trust Land Leasing Act of 2000*, 25 U.S.C. § 415(e), P.L. 106-568, Title XII, § 1202, December 27, 2000, 114 Stat. 2933 (hereinafter "Navajo Leasing Act"), authorizes the Navajo Nation to issue Leases, except mineral Leases, without the approval of the

Secretary, provided such Leases are executed under tribal regulations approved by the Secretary. The Secretary is authorized to approve such tribal regulations if such regulations are consistent with the regulations of the Secretary promulgated under 25 U.S.C. § 415(a), and any amendments thereto, and provide for an Environmental Review Process. These regulations will fulfill the requirements of the Navajo Leasing Act.

§ 2302. Purpose

The purposes of the *Navajo Nation General Leasing Regulations of 2013* are to:

A. Implement the authority of the Navajo Nation to issue Leases and Permits pursuant to the Navajo Leasing Act, as amended, and to establish streamlined procedures for environmental review, approval, management and enforcement of Leases;

B. Develop a framework for future Navajo Nation regulations that cover specific areas of leasing referenced in § 2305 as required by the Navajo Leasing Act and which are consistent with these *General Leasing Regulations*. The *General Leasing Regulations* must be in place prior to any Leases or Permits being approved under the authority of the Navajo Leasing Act;

C. Promote self-determination, encourage self-sufficiency, and improve efficiency of leasing of Navajo Nation Trust Lands;

D. Identify and implement processes to protect and preserve Navajo Nation Trust Land, including provisions for trust asset accounting, modern leasing practices, and accurate record keeping and title recording.

§ 2303. Title

These Regulations shall be referred to as the *Navajo Nation General Leasing Regulations of 2013.*

§ 2304. Definitions

For purposes of these Regulations:

A. *Assignment* means an agreement between a lessee/assignor and an assignee whereby the assignee acquires all of the lessee/assignor's rights and assumes all of the lessee/assignor's obligations under a Lease.

B. *Bond:*

i). *Appeal Bond* means a guarantee of a certain sum of money sufficient to protect the financial interest of the Navajo Nation pending the outcome of any appeals provided for under these Regulations;

ii). *Performance Bond* means a guarantee from a third party Surety that ensures performance obligations under a Lease, including but not limited to annual lease payments, development of improvements and reclamation requirements, if any.

C. *BIA* means the Bureau of Indian Affairs of the United States Department of the Interior.

D. *Categorical Exclusion or CATEX* means a category of actions which do not individually or cumulatively have a significant effect on human health or the environment and is therefore not subject to the Environmental Review Process under Subchapter 8 of these Regulations.

E. *Cognizant Agency* for purposes of environmental review means the Navajo Nation Environmental Protection Agency and the Navajo Nation Departments of Historic Preservation and Fish and Wildlife, and any successor or equivalent Navajo Nation agencies with authority for environmental compliance review.

F. *Compliance Determination* for purposes of environmental review means a "Cultural Resource Compliance Form," a "Biological Resource Compliance Form," or their equivalent.

G. *Delegation of Authority* means, where, upon approval of the Resources and Development Committee of the Navajo Nation Council, or its successor in authority, a political subdivision of the Navajo Nation assumes leasing authority for Leases described within these Regulations that are also delegable pursuant to the Local Governance Act, 26 N.N.C. §§ 1-2005, as amended, or other relevant Navajo Nation law.

H. *Exempt Activities* means activities that are exempt by Navajo Nation or federal law from the Environmental Review Process under Subchapter 8 of these Regulations.

I. *Fair Annual Lease Value* means the most probable dollar amount a property would bring in a competitive and open market.

J. *Finding of No Significant Impact or FONSI* means an Environmental Reviewer determines in a written document that a Leasing Decision will not have a significant impact on the quality of the human environment.

K. *Interested Party* means an Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interest could be adversely affected by a tribal trust land Leasing Decision made by the Navajo Nation.

L. *Lease* means a written agreement between the lessor and a lessee, issued under these Regulations as authorized by 25 U.S.C. §§ 415 (a) and (e), wherein the lessee is granted a right to possess Navajo Nation Trust Land for a specific purpose and limited duration.

M. *Leasing Decision* in the context of the Environmental Review Process means the following types of Lease or Permit transactions that will be acted on by the Navajo Nation or its delegated political subdivision:

i). Issuance of a Lease or Permit;

ii). Amendment or modification of a Lease or Permit;

iii). Assignment or transfer of a Lease or Permit; and

iv). Granting of a Sublease as applicable.

N. *Navajo Nation* means the Navajo Nation Government.

O. *Navajo Nation Trust Land* means the surface estate of land or any interest therein held by the United States in trust for the Navajo Nation; land held by the Navajo Nation and subject to federal restrictions against alienation or encumbrance; land held by the United States in trust for a Navajo Nation corporation chartered under Section 17 of the *Indian Reorganization Act*.

P. *Permit* means a written authorization or license granted by the Navajo Nation whereby the permittee is granted a use or revocable use privilege to use Navajo Nation Trust Land for a specified purpose and limited duration.

Q. *Petition* means a written request submitted to the Secretary for the review of an action or inaction of the Navajo Nation that is claimed to be in violation of these Regulations. Petition may only be submitted within thirty (30) days after exhausting all remedies available on the Navajo Nation.

R. *Regulations* mean these *Navajo Nation General Leasing Regulations of 2013.*

S. *Secretary* means the Secretary of the U.S. Department of the Interior or his or her authorized representative acting under delegated authority.

T. *Significant Impact* means a determination that an action will have a significant effect on the quality of the human environment after considering the following:

i). effects on public health and safety;

ii). effects on the unique characteristics of the geographic areas, including its historic or cultural resources, park lands or ecologically critical areas;

iii) highly controversial effects on the human environment;

iv). highly uncertain or unknown effects on the human environment;

v). effects in terms of precedent for future actions with significant effects;

vi). effects that may be individually insignificant, but when considered with other projects, have a significant impact on the environment;

vii). effects that cause loss or destruction of scientific, cultural, or historical resources; and

viii). effects on endangered or threatened species or habitat protected under Navajo Nation or federal law.

U. *Sublease* means a written agreement by which the lessee grants a right of possession no greater than that held by the lessee under the Lease.

V. *Surety* means one who guarantees the performance of another.

W. *Trespass* means the unauthorized possession, or occupancy or use of Navajo Nation Trust Land as defined by Navajo Nation or federal law.

§ 2305. Scope

A. These Regulations apply to all Leases and Permits for use or possession of Navajo Nation Trust Lands authorized under 25 U.S.C. §§ 415(a), 415(e) and 635(a), including Leases for the development or utilization of natural resources, including renewable energy Leases and agricultural Leases, telecommunications site Leases, and Leases for public, religious, educational, recreational, or residential purposes, except business site leases which are authorized pursuant to Navajo Nation Business Leasing Regulations of 2005 approved by the Secretary on July 10, 2006. These Regulations shall not apply to mineral Leases. Nothing herein shall be construed to affect the terms and conditions of an existing Lease.

B. Leases are mandatory for any short or long term use of Navajo trust land or where any permanent structure is fixed or located on Navajo trust land. Failure to comply with this section shall be addressed pursuant to Navajo Nation law.

§ 2306. Effective Date

These Regulations shall take effect upon approval by the Secretary.

§ 2307. Choice of Law

All disputes arising out of Leases shall be resolved under the laws of the Navajo Nation, unless such laws are in conflict with federal law. Nothing herein shall be construed as a waiver of the sovereign immunity of the Navajo Nation.

§ 2308. Duration and Renewal

No Lease shall be approved more than twelve (12) months prior to the commencement of the term of the Lease. A Lease for public, religious, educational, recreational, or residential purposes may provide for a term up to and not to exceed seventy-five (75) years. The term of a Lease for any other purpose shall not exceed twenty-five (25) years except that any such Lease may include an option to renew for up to two additional terms, each of which may not exceed twenty-five (25) years on such terms and conditions as may be specified in such Lease, or such greater term as may be authorized by Congress. Unless the term of a Lease is for less than one year, a lessee shall notify the Navajo Nation of its intent to renew a Lease at least one year prior to the end of the lease term.

Subchapter 2. Obtaining a Lease

§ 2320. Information

Information on obtaining a Lease shall be available at the Navajo Land Department (NLD) of the Navajo Nation Division of Natural Resources, or other places authorized by Navajo Nation law. All applicants for Leases shall submit to the Navajo Nation a cover letter requesting a Lease. The Navajo Land Department, or political subdivision of the Navajo Nation, as applicable, shall inform the potential lessee of the requirements and requisite documentation needed to obtain a Lease.

§ 2321. Lease Application Supporting Documents

A. A final Lease application requires the following documents for processing: (1) a fully completed Lease form; (2) an appraisal, if applicable; (3) a certified site survey, survey plat and legal description; (4) documentation of environmental review made pursuant to subchapter 8 of these Regulations; and (4) other documents as may be required pursuant to Navajo Nation law or policies, or applicable federal law.

B. The NLD or its successor shall not process the Lease or Permit application for final approval until all the required documents under this section have been provided for review and consideration by the authorized approving authority.

§ 2322. Records

A. The Navajo Nation shall record all Leases, Permits (except Permits that do not involveany land disturbance) Subleases, Assignments, amendments, encumbrances, renewals, modifications and cancellations, made, issued or otherwise authorized pursuant to these Regulations, with the:

Land Title and Records Office

Southwest Regional Office

Bureau of Indian Affairs
P.O. Box 26567
Albuquerque, NM 87125-6567

B. A copy of a Lease and all amendments, renewals, cancellations, and Assignments thereto shall also be sent for information purposes only to the Secretary of the Interior, c/o the Bureau of Indian Affairs, Navajo Regional Office, for the appropriate Agency Real Estate Services Offices at the addresses provided below,

pursuant to 25 U.S.C. §§ 415 (e)(4)(A) and (B). The five Agency Real Estate Services Offices are:

Agency	Address
Chinle Agency	Real Estate Services P.O. Box 7H Chinle, AZ 86503
Eastern Navajo Agency	Superintendent Attention: Real Estate Services P.O. Box 328 Crownpoint, NM 87313
Fort Defiance Agency	Real Estate Services P.O. Box 619 Ft. Defiance, AZ 86504
Shiprock Agency	Real Estate Services P.O. 3538 Shiprock, NM 87420
Western Navajo Agency	Real Estate Services P.O. 127 Tuba City, AZ 86045

§ 2323. Ownership of Records

Records of activities taken pursuant to these Regulations are the property of the United States and the Navajo Nation and its delegated political subdivisions. Records compiled, developed or received by the Navajo Nation in the course of business with the Secretary are the property of the Navajo Nation.

Subchapter 3. Lease Requirements

§ 2330. Terms and Conditions

Leases shall be in a form approved by the Navajo Nation in accordance with applicable law and shall include standard terms and conditions. The standard terms and conditions may be modified only with the approval of the Navajo Nation. Leases may contain a provision that requires a lessee to consent to the jurisdiction of the Navajo Nation to address all issues arising out of the Lease.

§ 2331. Land Descriptions

Leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems.

§ 2332. Appraisal, Local Studies

A. Appraisal Method:

1. The Fair Annual Lease Value shall be determined by an appraisal or equivalent procedure performed by the Navajo Nation utilizing the following data: improvement cost, replacement cost, earning capacity, and sales and Lease data of comparable sites.

2. Alternatively, the Fair Annual Lease Value shall be determined by an appraisal performed by a licensed appraiser utilizing the *Uniform Standards of Professional Appraisal Practice* or other commonly accepted method of appraisal.

3. An appraisal log reporting the methods of appraisal and appraisal value of trust land shall be attached to every Lease.

B. If the need arises, the Navajo Nation may seek assistance from the Office of Special Trustee's Navajo Region, Branch of Appraisal, for technical assistance in reviewing an appraisal or to perform an appraisal required under these Regulations.

C. No appraisal shall be required for a Lease for i) residential purposes, including home sites, schools, religious facilities, or medical facilities; ii) Leases for use of Navajo Nation Trust Land by federal, state and local governments, non-profits, public projects or public utilities, where such entities or projects are providing essential governmental or utility services to Navajo people; or iii) for other public purposes as authorized by applicable laws and regulations.

§ 2333. Environmental Review Process

The Navajo Nation shall not make a final Leasing or Permitting Decision unless the Nation has ensured compliance with the Environmental Review Process ("ERP") required under these Regulations. The Navajo Nation shall not approve of any Lease or Permit if there is a determination of non-compliance under Subchapter 8 in these Regulations. Leases executed in material violation of this section shall be null and void.

§ 2334. Fair Annual Lease Value

A. Unless otherwise provided, no Lease shall be approved for less than the present Fair Annual Lease Value as set forth in the appraisal, except as follows:

1. The lessee is in the authorized development period;

2. The Navajo Nation is providing an incentive for the Lease applicant to locate on the Navajo Nation, and must provide Lease concessions, Lease improvement credits, and Lease abatements to attract the proposed Lease activity ; or

3. The Navajo Nation otherwise determines such action is in the best interest of the Navajo Nation.

B. Unless otherwise provided, Lease payments will be structured on a flat lease rate basis.

C. Unless otherwise provided, the Lease shall provide for periodic review and adjustment at least every five years. Such review and adjustment shall give consideration to the then existing economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvement or development.

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

E. Leases may be amended to allow for lease rate adjustments.

F. The Navajo Nation may waive the rent, or charge nominal rent, for i) residential Leases, including home sites, schools, religious facilities, or medical facilities; ii) Leases for use of Navajo Nation Trust Land by federal, state and local governments, non-profits, public projects and public utilities, where such entities or projects are providing essential governmental or utility services to Navajo people; or iii) for other public purposes as authorized by applicable laws and regulations.

G. The Navajo Nation shall keep written records of the basis used in determining the Fair Annual Lease Value, as well as the basis for adjustments. These records shall be included in the appropriate Lease file.

§ 2335. Performance Bond

A. The lessee, unless otherwise provided, shall obtain a satisfactory Performance Bond or other Surety acceptable to the Navajo Nation, in an amount that reasonably assures performance of the Lease. Such Bond shall be for the purpose of guaranteeing:

1. The annual Lease payment;

2. The estimated development cost of improvements;

3. Compliance with a reclamation plan, if applicable; and

4. Any additional amount necessary to ensure compliance with the Lease.

B. The Navajo Nation may waive the Bond requirement, or reduce the amount, if doing so is in the best interest of the Navajo Nation. In the event that a reclamation plan is determined to be necessary by the Nation, the lessee shall be required to submit such a plan prior to Lease approval, and implement the plan at termination of the Lease. This Bond requirement shall not apply where the Navajo Nation has waived the rent, except where a reclamation plan is determined necessary. The Navajo Nation shall maintain written records of waivers and reductions in the appropriate Lease file.

§ 2336. Insurance

A lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and must be authorized to do business in the state where the premises is located, or authorized by the Navajo Nation according to applicable Navajo Nation law. It shall cover general liability and casualty. The amount shall be sufficient to cover the improvements, personal injury or death, and any reasonably potential foreseeable loss of the lessor and the United States. The insurance shall expressly identify the lessor and the United States as additional named insured parties. The insurance requirements shall not apply to home site Leases or when the Navajo Nation is the lessee. The Navajo Nation may waive the insurance requirement for any lessee that is an entity or enterprise of the Navajo Nation.

§ 2337. Improvements

A. Improvements to the premises shall become the property of the Navajo Nation at the termination of the leasehold unless otherwise provided for in the Lease. If the Lease authorizes the

improvements to be removed by the lessee, the Lease shall specify the time allowed for such removal.

B. If provided for in the Lease, a lessee may develop equity value in the improvements, and sell its interest in the Lease based on the equity value. The Navajo Nation shall have a right of first refusal to purchase such interest.

§ 2338. Subleases, Assignments, Amendments and Encumbrances

A. All Subleases, Assignments, amendments or encumbrances of any Lease shall require the written consent of the Navajo Nation as well as any sureties, unless otherwise provided herein.

B. A Lease may authorize Subleases, in whole or in part. The lessee shall remain liable for its duties under the Lease notwithstanding any subleasing of the leasehold or any part thereof.

C. The Lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises, subject to the approval of the Navajo Nation. If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the Lease without approval of the Navajo Nation or lessee, provided the encumbrancer/assignee must agree in writing to be bound by all the terms and conditions of the Lease. If the purchaser is a party other than the encumbrancer, approval by the Navajo Nation shall be required, and any approved purchaser must agree in writing to be bound by all the terms and conditions of the Lease.

Subchapter 4. Lease Administration

§ 2350. Administration

A. The Navajo Nation shall administer Leases executed pursuant to these Regulations and may administer existing Leases previously approved by the Secretary as may be provided for under a P.L. 93-638 self-determination contract or compact or under other applicable authority.

B. The Navajo Nation shall employ sound real estate management practices in exercising its authority under these Regulations, including without limitation accounting, collections, monitoring, enforcement, relief, and remedies.

C. Political subdivisions of the Navajo Nation may issue Leases pursuant to a Delegation of Authority provided they do so in accordance with these Regulations and Navajo Nation law.

Administration by a political subdivision of Leases executed prior to such political subdivision obtaining such authority shall require an Assignment of the Navajo Nation's duties and rights as lessor and consent of the lessee. Such Delegation of Authority shall be revocable by the Resources and Development Committee of the Navajo Nation Council upon recommendation of the Navajo Nation Department of Justice.

§ 2351. Accounting

The Navajo Nation shall implement and/or maintain an accounting system to ensure proper payment on Leases where applicable, in accordance with Navajo Nation law and fiscal policies.

§ 2352. Administrative Fees

The Navajo Nation may charge administrative fees for costs associated with issuing a Lease, Sublease, Assignment, amendment, mortgage or other administrative transaction.

Subchapter 5. Enforcement

§ 2360. Enforcement

The Navajo Nation and its delegated political subdivisions shall have the authority to enforce the terms and conditions of Leases and Permits issued under these Regulations in accordance with applicable Navajo Nation and federal law.

§ 2361. Defaults, Cancellation and Remedies

A. A Lease shall include provisions for fair notice, default, and remedies. Upon a showing satisfactory to the Nation that there has been a violation of the Lease or these Regulations, or of any law or regulation specifically applicable under the Lease, by a lessee, the lessee shall be provided with written notice of the alleged breach, and given ten (10) days to show cause why the Lease should not be cancelled. Upon request by the lessee, the lessee shall be given a reasonable opportunity to cure a breach which the Navajo Nation determines can be corrected and the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period as established by the Navajo Nation's authorized representative.

B. If the Navajo Nation cancels a Lease, the Navajo Nation shall provide the lessee with thirty (30) days' advance notice of the cancellation by certified mail, which shall become effective thirty-two (32) days after mailing. Such notice shall state the right to

appeal to the Office of Hearing and Appeals pursuant to Subchapter 6 of these Regulations, and a statement of any monies due.

C. In case of the cancellation of a Lease, the filing of an appeal shall not change the effective date of the cancellation, but shall stay any eviction proceeding in accordance with Subchapter 6 of these Regulations. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the Lease, including any requirements for environmental or hazardous waste remediation and reclamation of the leasehold premises. If the lessee fails to make such payments pending the outcome of an appeal, the stay shall be lifted and the Navajo Nation may immediately commence eviction proceedings, bring an action in forcible entry and detainer, pursue remedies under the Navajo Nation Civil Trespass Act, or take any other action the Navajo Nation deems appropriate to protect its interests.

§ 2362. Penalties

A Lease shall specify the rate of interest to be charged if the lessee fails to make payments in a timely manner and identify additional late payment penalties. Unless the Lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from the Navajo Nation, and the failure to pay such amounts shall be treated as a breach of the Lease.

§ 2363. Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or engages in criminal activity thereon, the Navajo Nation may take appropriate emergency action in accordance with Navajo Nation law, including immediately cancelling the Lease, commencing eviction proceedings, bringing an action in forcible entry and detainer, pursuing remedies under the Navajo Nation Civil Trespass Act, or taking any other action deemed appropriate to protect the public interest, the premises, and the environment.

§ 2364. Holdover and Trespass

If a lessee remains in possession after the expiration or cancellation of a Lease, the Navajo Nation may treat such occupation as a holdover tenancy, or as a Trespass, and if treated as a Trespass may pursue any remedy available under Navajo Nation or federal law.

Subchapter 6. Appeals

§ 2370. Appeals

A. A lessee or Interested Party may appeal a final determination of the Navajo Nation regarding a Lease within twenty (20) days of the determination. Such appeal shall be filed with the Navajo Nation Office of Hearings and Appeals (OHA). The written complaint shall set forth in plain language the basis for the appeal, a short statement demonstrating the interest of the appellant, a short statement indicating the nature and circumstance of the appeal, and a short statement indicating the remedy being sought. A stay of enforcement shall be effectuated only by the filing of an Appeal Bond set by the OHA pending the exhaustion of all available Navajo Nation remedies, except in matters involving home site Leases, which shall not require an Appeal Bond. Service of process shall be made on the authorized Navajo Nation representative identified in the Lease and to the Navajo Nation Office of the Attorney General in accordance with the Navajo Rules of Civil Procedure.

B. An Appeal Bond shall be set in an amount sufficient to protect the Navajo Nation from all financial losses that may occur as result of the appeal. Appeal Bond requirements shall not be separately appealed, but may be contested during the appeal as a preliminary matter for expedited decision by OHA.

C. The OHA shall uphold the determination of the Navajo Nation unless it is:

1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

2. In excess of statutory jurisdiction, authority, or limitations or short of statutory right;

3. Without observance of procedure required by law; or

4. Unsupported by substantial evidence.

§ 2371. Appeals to the Navajo Nation Supreme Court

The lessee or Interested Party may appeal, within thirty (30) days, the final decision of OHA to the Navajo Nation Supreme Court. A stay of execution may be effectuated by the Navajo Nation Supreme Court only by the filing of an Appeal Bond except in matters involving home site Leases which shall not require an Appeal Bond. The failure to exhaust administrative remedies before the OHA or to file an appeal within thirty (30) days shall be a jurisdictional bar to the filing and consideration of any such appeal. Review shall be limited to issues of law and the record. The Court shall uphold

findings of fact if supported by substantial evidence and review issues of law de novo. A finding of fact is supported by substantial evidence where, upon examining the relevant evidence, a reasonable mind could accept the evidence as adequate to support the conclusion, even if it is possible to draw two inconsistent conclusions from the evidence.

[Subchapter 7. Reserved]

Subchapter 8. Environmental Review Process

§ 2380. Environmental Reviewer

Prior to exercising leasing authority under these Regulations, the Navajo Nation shall create a position within the Navajo Nation Division of Natural Resources to be the Environmental Compliance Officer for Leases ("Environmental Reviewer" or "ER") who shall be responsible for carrying out the Environmental Review Process ("Environmental Review Process" or "ERP") under this Subchapter. The ER will consult with the relevant Navajo Nation agencies and determine which Cognizant Agency is responsible for making Compliance Findings for each of the areas and/or laws identified in §2384 of this Subchapter.

§ 2381. Environmental Reviewer's Authorities and Duties

A. The ER shall:

1. Review all proposed Leases and Permits to ensure compliance with these Regulations and other applicable law and policies.

2. Establish procedures to expedite the Compliance Determination process, and consult with appropriate Navajo Nation agencies in the development and implementation of any such procedures.

3. Perform the ERP and make a summary of Environmental Review Findings and Compliance Determinations ("Compliance Determination Summary").

4. Complete an Environmental Review Record ("ERR" or "Record").

B. At his or her discretion, the ER may provide the lessee with technical assistance to remedy deficiencies found within the contents of the Compliance Determination forms.

§ 2382. Threshold Determinations

A. Leasing and Permitting Decisions Not Subject to ERP: (i) The Navajo Nation is not required to undertake an environmental review under these Regulations for activities exempt under Navajo Nation or federal law. (ii) The Navajo Nation is not required to undertake an environmental review under these Regulations for activities it determines are a CATEX, unless the activities may have a Significant Impact on the quality of the human environment. If the ER determines that a Leasing Decision is exempt or qualifies as a CATEX, the ER shall provide written documentation of such determination.

B. If the ER determines, after consulting with the Cognizant Agencies, that the Leasing Decision by its nature would not individually or cumulatively have a Significant Impact on human health or the environment, to include the biological and cultural resources of the Navajo Nation, the ER shall issue a written Finding of No Significant Impact and the Leasing Decision shall be exempt from additional requirements of the ERP, subject to the recording requirements of §2388 and §2389; CATEX activities include:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of buildings and improvements not requiring a change in land use.

2. Acquisition, repair, reconstruction, or rehabilitation of facilities (other than buildings) and improvements not changing the size or capacity, and not changing the design use.

3. Activities already contemplated under a master Lease for which the environmental review was already completed.

4. Renewals, extensions and amendments to existing Leases and Permits where the environmental review was already completed, and no Significant Impact to the human environment will occur.

5. Removal of materials and architectural barriers that restrict the accessibility of elderly and handicapped persons.

C. Leasing Decision Subject to Environmental Review Process: If the ER determines that the Leasing Decision may individually or cumulatively have a Significant Impact on human health or the environment, including but not limited to impacting, altering, or

disturbing the biological and cultural resources of the Navajo Nation, the Leasing Decision shall be subject to the ERP.

§ 2383. Action on Leasing Decision Subject to Completion of ERP

If the ER determines that a Leasing Decision is subject to an ERP, the Leasing Decision shall not be made until the ER completes the ERP as required by these Regulations.

§2384. Lessee Responsible for Environmental Compliance Determinations

A. A lessee has primary responsibility for providing documentation of environmental compliance. The Lessee shall provide to the ER a Compliance Determination for all environmental laws, Regulations and policies, as amended, applicable to the Leasing Decision, including, but not limited to the following:

- National Historic Preservation Act, 16 U.S.C. §§ 470 *et seq.*
- Endangered Species Act, 7 U.S.C. § 136, U.S.C. §§ 1531 *et seq.*
- Farmland Protection Policy Act, 7 U.S.C. §§ 4201 *et seq.*
- Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*
- Eagle Protection Act, 16 U.S.C. §§ 668-668c
- Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712
- Navajo Nation Environmental Policy Act, 4 N.N.C. §§ 901 *et seq.*
- Navajo Nation Cultural Resources Protection Act, 19 N.N.C. §§ 1001 *et seq.*
- Navajo Nation Solid Waste Act, 4 N.N.C. §§ 101 *et seq.*
- Navajo Nation Air Pollution Prevention and Control Act, 4 N.N.C. §§ 1101 *et seq.*
- Navajo Nation Safe Drinking Water Act, 22 N.N.C. §§ 2501 *et seq.*
- Navajo Nation Clean Water Act, 4 N.N.C. §§ 1301 *et seq.*

- Navajo Nation Underground Storage Tank Act, 4 N.N.C. §§ 1501 *et seq.*
- Navajo Nation Pesticide Act, 4 N.N.C. §§ 301 *et seq.*
- Golden and Bald Eagle Nest Protection Regulations (GBENPR)
- Navajo Endangered Species List (NESL)
- Biological Resource Land-Use Clearance Policies and Procedures (RCP)
- All other applicable Navajo Nation and federal laws, regulations and policies
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B. Lessee's responsibility to provide said environmental Compliance Determinations under this Subchapter is in addition to and separate from lessee's ongoing obligation to comply with all applicable environmental laws.

§ 2385. Compliance Determinations

A. The lessee shall request a Compliance Determination from each Cognizant Agency identified by the ER and shall provide said agency with the information it requires to make the Compliance Determination. Findings and Compliance Determinations must be signed by the agency official responsible for such findings and determinations.

B. The Compliance Determination performed by the Cognizant Agencies must clearly describe the Leasing Decision under consideration, provide an evaluation of the Leasing Decision's impact on the regulated resource or condition, and provide a finding whether the Leasing Decision will comply with all applicable environmental laws under that agency's purview, and identify any mitigation required for compliance.

C. If the ER and the lessee have made reasonable efforts to obtain a Compliance Determination from the Cognizant Agency, and are unable to obtain a Compliance Determination within thirty (30) days of the Agency having received the request for a determination and all applicable information, the ER may make the Compliance Determination, provided, the Compliance Determination must be supported by knowledge and reliable information which can be obtained from other sources.

§2386. Compliance Determinations in Earlier or Concurrent Environmental Review Documents

A. If the Leasing Decision pertains to an existing Lease that has undergone an environmental review pursuant to the these Regulations, the Nation's Business Site Leasing Regulations, or the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et. seq.* (NEPA), those earlier environmental review documents may be used to meet one or more Compliance Determination(s) under this Subchapter, subject to the ER's determination in §2388 that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.

B. As early in the process as possible, the ER should review the earlier environmental review documents and assess whether the Compliance Determinations in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not evaluated by the earlier environmental review documents, a compliance update or amendment from the agency that has regulatory responsibility for the resource that has not been adequately evaluated shall be required.

C. In the event a federal agency requires the lessee to conduct an environmental review under NEPA in connection with a federal decision that is related to the Leasing Decision, the ER may use those NEPA documents for purposes of the ERP if the documents meet the requirements of this Subchapter.

§ 2387. Public Notice Requirements and Hearings

A. If the ER finds that a Leasing Decision is likely to have a Significant Impact on the human environment, the ER will consider and analyze reasonable alternatives that may minimize the impacts and provide the public notice of the Navajo Nation's intent to complete an ERP as well as the opportunity to comment on the alternatives.

B. Such notice will be published in a local newspaper of general circulation, and will provide for a thirty (30) day comment period, which may be extended for good cause in the ER's discretion. The Notice will identify where the Environmental Review Record ("Record" or "ERR"), may be obtained. The notice will state that public comments which are timely received will be considered before the ER completes the ERP.

C. The ER shall determine whether or not to hold public hearings. The ER shall consider the following factors in making its determination:

1. Economic cost;
2. Geographic areas;
3. Amount of resources needed;
4. Degree of controversy or support; and
5. Extent to which public involvement may have been achieved by other means.

D. All public hearings shall be published in the media at least fifteen (15) days prior to the hearing. The notice shall include the following information:

1. The date, time, place and purpose of the public hearing;

2. A description of the project, its location, estimated cost and benefits;

3. A statement that individuals will be afforded the opportunity to comment on environmental issues;

4. State the ER's name and address; and

5. State what documents are available for review by the public where they may be obtained, and any charges that may apply to providing the information to the public.

§ 2388. Finding of Environmental Compliance and Completion

A. Before the ER may complete the ERP, the ER shall:

1. Ensure that the public comment period has passed, if applicable, and the ER has considered any comments and incorporated the comments and any responses of the Navajo Nation as appropriate into the Record;

2. Affirmatively find and place in the Record a signed, dated statement that the Leasing Decision is in compliance with all applicable environmental requirements ("Finding of Compliance").

3. Place a summary of the Compliance Findings in the Record, which shall include:

i. The identification of the source of a Compliance determination if contained in an earlier environmental review; and

ii. A summary and copy of each Cognizant Agency's Compliance Determination for all applicable

environmental laws under that agency's purview, including any conditions of compliance or required mitigation.

B. Upon Completion of the ERP, the ER will transfer the Record to the appropriate Navajo Nation official or legislative body that has the authority to make a final Leasing Decision.

§ 2389. Environmental Review Record

A. An Environmental Review Record must be completed for every ERP, including for Leasing Decisions the ER finds to be exempt from the ERP, qualifies as a CATEX or exempt from a full ERP based upon a Finding of No Significant Impact under §2382 (A) and (B). The ERR must be maintained in a written format and shall be available for public review in accordance with the Navajo Nation Privacy Act, 2 N.N.C. §§ 81 *et seq.*, as amended.

B. The Environmental Review Record must contain all documents relevant to the ERP, including but not limited to, the following:

1. Written determinations by the ER pursuant to this Subchapter;

2. Correspondence with the Lessee and government agencies including all Cognizant Agencies;

3. Compliance Determinations including source documents and supporting documents;

4. Public notices, if applicable;

5. Public comments and any responses, if applicable; and

6. The Finding of Compliance and Compliance Determination Summary and ER Findings.

§ 2390. Revisions to the Environmental Review Record

A. The ER shall reopen an ERR if:

1. There are changes in the nature, magnitude or extent of a proposed activity, and that activity was not already contemplated and may have a significant effect on the human environment.

2. There are changes in the circumstances and environmental conditions, and these were concealed in the original ERR.

3. There are changes in data and conditions since the original ERR was completed.

B. Once the responsibility entity reevaluates the ERR, it shall either revise the ERR, or develop a new ERR.

Subchapter 9. Amendments; Severability

§ 2395. Amendments

A. The Resources and Development Committee of the Navajo Nation Council or its successor may amend these Regulations without the Secretary's approval, so long as the amendment is for clarification or administrative convenience, and is not inconsistent with 25 U.S.C. § 415(e), as amended.

B. The determination of whether a proposed amendment to the Regulations is for clarification or administrative convenience and that it is not inconsistent with 25 U.S.C. §415(E) shall be made by the Attorney General, Navajo Nation Department of Justice.

§ 2396. Severability

If any Navajo Nation court or other court of competent jurisdiction determines a provision in these Regulations or a Lease is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the invalid, void or unenforceable portion.

§ 2397. Petitions to the Secretary

Any Interested Party aggrieved by the Navajo Nation's violation of these Regulations may file a Petition with the Secretary within thirty (30) days after exhausting all available Navajo Nation remedies to review the alleged violation as provided for under 25 U.S.C. § 415(e). The failure to exhaust all available Navajo Nation remedies and to file a Petition within thirty (30) days shall be a jurisdictional bar to the filing and consideration of any such Petition. The Secretary shall review any findings of fact under a clearly erroneous standard and shall review any conclusions of federal law de novo, but shall defer to Navajo Nation administrative hearing bodies and/or Navajo Nation courts on the proper

interpretation of Navajo Nation law. In any such Petition, the Secretary shall limit relief to mediation, injunctive relief, declaratory relief, and/or rescinding approval of these Regulations and reassuming responsibility for the approval of Leases for Navajo Nation Trust Lands.

Section 3. Effective Date

Subject to section 2306 of the regulations above, the Act Enacted herein shall be effective pursuant to 2 N.N.C. §221.

Section 4. Codification

Subject to section 2306 of the regulations above, the provisions of this Act which amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel,. The Office of Legislative Counsel shall incorporate such amended provisions in the next codification of the Navajo Nation Code.

Section 5. Savings Clause

Should any provision of this Act be determined invalid by the Navajo Nation Supreme Court, or the District Courts of the Navajo Nation without appeal to the Navajo Nation Supreme Court, those provisions of the Act which are not determined invalid shall remain the law of the Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona) at which a quorum was present and that the same was passed by a vote of 16 in favor and 1 opposed, this 22nd day of October 2013.

Johnny Naize, Speaker
Navajo Nation Council

11-01-13
Date

Motion: Honorable Leonard Pete
Second: Honorable Duane Tsinigine

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I hereby sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this _____ day of NOV 06 2013 2013.

Ben Shelly, President
Navajo Nation

2. I hereby veto the foregoing legislation, pursuant to 2 N.N.C. §1005 (C) (11), this _____ day of _____ 2013, for the reason(s) expressed in the attached letter to the Speaker.

Ben Shelly, President

Navajo Nation