



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

45-Day Public Review

HO-CHUNK NATION LEGISLATURE AUTHORIZATION TO PLACE AMENDMENTS TO THE *AGRICULTURAL LEASING CODE* (8 HCC § 9) OUT FOR FORTY-FIVE DAY PUBLIC COMMENT

RESOLUTION 05-21-24 F

- WHEREAS,** on November 1, 1994, the Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation (“Constitution”), formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation (“Nation”) is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Ho-Chunk Nation Legislature (“Legislature”) the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** Article V, Section 2(k) of the Constitution grants the Legislature the power to acquire or purchase lands for the benefit of the Nation and its members; and
- WHEREAS,** Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands or other assets; and
- WHEREAS,** Article V, Section 2(o) of the Constitution grants the Legislature the power to enact laws to regulate and zone any lands within the jurisdiction of the Ho-Chunk Nation; and
- WHEREAS,** Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions, and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and
- WHEREAS,** the Ho-Chunk Nation Legislature passed the LEGISLATIVE ORGANIZATION ACT (2 HCC § 11), which was last amended on September 13, 2022; and

Executive Offices

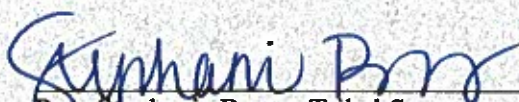
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- WHEREAS,** the LEGISLATIVE ORGANIZATION ACT provides the procedures for enacting or amending a Ho-Chunk Nation law; and
- WHEREAS,** Section 45, subparagraph d(1)(a) of the LEGISLATIVE ORGANIZATION ACT provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days; and
- WHEREAS,** the Legislature enacted the AGRICULTURAL LEASING CODE (8 HCC § 9) on December 17, 2013; and
- WHEREAS,** Section 6 of the AGRICULTURAL LEASING CODE (8 HCC § 9) states that “no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations;” and
- WHEREAS,** the Legislature previously sent the amended RESIDENTIAL LEASING CODE (8 HCC § 11) to the Secretary of the Interior and received comments on the amendments and additional recommended amendments from the Bureau of Indian Affairs within the Department of the Interior; and
- WHEREAS,** the Realty Division of the Department of Administration reviewed and considered the recommended amendments to the RESIDENTIAL LEASING CODE (8 HCC § 11) as to how those may relate and be necessary to the AGRICULTURAL LEASING CODE (8 HCC § 9), as well as additional changes necessary, and has presented them to the Legislature for consideration; and
- WHEREAS,** the Legislature finds that it appropriate to place the AGRICULTURAL LEASING CODE (8 HCC § 9) out for public review and comment to receive input regarding the need for any potential amendments;

NOW THEREFORE BE IT RESOLVED that the Legislature, pursuant to its Constitutional authority, and the LEGISLATIVE ORGANIZATION ACT, hereby places the attached amendments to the AGRICULTURAL LEASING CODE (8 HCC § 9), out for forty-five (45) day public comment, to run from the date the proposed amendments are posted on the Nation’s website.

CERTIFICATION

I, the undersigned, as Secretary for the Ho-Chunk Nation Legislature, hereby certify that the Legislature of the Ho-Chunk Nation, composed of **13 members**, of whom **13** constituting a quorum were present at a meeting duly called and convened and held on the **21st day of May, 2024**, that the foregoing resolution was adopted at said meeting by an affirmative vote of **13 members, 0 opposed, and 0 abstaining**, pursuant to the authority of Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that said resolution has not been rescinded or amended in any way. I further certify that this is a verified copy of said resolution.


Rep. Stephanie Begay, Tribal Secretary

05.21.24
Date



**HO-CHUNK NATION CODE (HCC)
TITLE 8 – HOUSING, REAL ESTATE AND PROPERTY CODE
SECTION 9 – AGRICULTURAL LEASING CODE**

ENACTED BY LEGISLATURE: DECEMBER 17, 2013

CITE AS: 8 HCC § 9

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CHAPTER I INTRODUCTION

1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(l) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation’s lands, interests in lands or other assets.

c. Article V, Section 2(p) of the Constitution grants the Legislature the power to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

2. Purpose. The purpose of this Code is to enhance accountability and ensure real property held in trust by United States for the Ho-Chunk Nation (“Nation”) and leased to its members or non-members is used to provide minimal financial risk and clarify the legal responsibility of the Nation.

The Nation has a critical role and responsibility to provide the Nation’s communities and members with a sustainable, compatible method of leasing the Nation’s lands that clarifies the expectations and responsibilities between the lessor and lessee. The Nation recognizes that the provision of land and buildings, including but not limited to barns, sheds, pole buildings, plays a vital role in the successful functional use of the Nation’s lands in all communities.

The Code shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act [PL 112-151 and 126 Stat. 1150](#)”), [amended 25 U.S.C. 415](#), by establishing a process under the Lease Agreement with the Nation which will not require the approval of the Secretary of the Interior (“Secretary”) if the Lease Agreement is executed under this Code approved by the Secretary. Nothing in this Code is intended to expand the authority or responsibility of the Secretary beyond that provided for under applicable federal statutes or regulations.

3. Intent.

a. The Code covers all land held in trust by United States for the Nation. It also covers land and/or buildings that are leased by the Nation for agricultural purposes. The Nation’s real property, consisting of land, buildings, air rights, mineral rights, cultural rights, and all other

constitutional, legal and Code rights, may only be used for a purpose that benefits the Nation and the Nation's members.

b. Lease Agreements may relate to agricultural land and buildings.

c. The Nation will not, under any circumstances, permit the unrestricted use of its property by individuals or groups. Use of the Nation's properties requires a written lease, license, or contract.

d. The Lessee will agree to abide by all laws of the Nation.

4. Applicability.

a. Except as excluded under Section 4(b) below, or as contrary to applicable federal statutes and regulations this Code shall apply to:

(1) Leases providing for agricultural use; and

b. This Code shall not apply to:

(1) Residential leases;

(2) Commercial or business leases;

(3) Mineral leases; or

(4) To any lease of individually owned Indian allotted land in accordance with ~~25 U.S.C. 415(h)(2)~~ this Code.

5. Controlling Law.

a. To the extent that this Code conflicts with any applicable federal statutes or regulations the federal statute or regulation shall control.

b. To the extent that any Lease to which this Code applies conflicts with this Code, this Code shall control.

6. Amendment. This Code may be amended by majority vote of the Ho-Chunk Nation Legislature ("Legislature"), provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

7. Effective Date. This Code shall become effective as the Nation's law, for all purposes, on the date of enactment by the Legislature and approval by the Secretary.

8. Severability. If any provision or provisions of this Code shall in the future be declared invalid by the Ho-Chunk Nation Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

9. Definitions. For the purpose of this Code the below terms are defined:

a. Agricultural land. The Nation's 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.

b. Agricultural lease. A lease of Nation's agricultural land for farming and/or grazing purposes.

c. Agricultural products. Agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed or manufactured products thereof, transported or intended to be transported in interstate and/or foreign commerce.

d. Agricultural use. The production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes as well as the raising of domestic animals and wildlife in domestication or a captive environment.

e. AIARMA. The American Indian Agricultural Resources Management Act of December 3, 1993 (107 Stat. 2011, 25 U.S.C. 3701 et seq.), as amended on November 2, 1994 (108 Stat. 4572).

f. Assignment. An agreement between a Lessee and Assignee, whereby the Assignee acquires all or some of the Lessee's rights, and assumes all or some of the Lessee's obligations, under a lease.

f.g. Attorney General. The Ho-Chunk Nation Attorney General.

g-h. BIA. The Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.018.

h-i. Code. A guiding or governing principle that mandates or constrains actions, has Nation-wide application, will change infrequently and sets a course for the foreseeable future, helps to ensure compliance, enhances the Nation's mission and reduces liability risk, and is approved by the authoritative decision-makers of the Nation.

h-j. Constructive notice means notice:

(1) Posted at the tribal government office, tribal community building, and/or the United States Post Office; or

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

k. Court of competent jurisdiction. A Federal, Tribal, or State court with jurisdiction.

~~j.l. Division of Realty. The Nation's Department of Administration Division of Realty.~~

~~k.m. Environmental Review Record. A well-organized written record of the environmental review process and subsequent determinations. DNR. The Nation's Department of Natural Resources.~~

l.n. Fair Annual Lease Value. The amount of rental income that a leased tract of the Nation's land would most probably command in an open and competitive market, or as determined by competitive bidding.

m.o. Interested Party. An Indian or non-Indian individual or corporation, or tribal or non-tribal government whose interests could be adversely affected by a decision of the Nation to lease a Housing Unit or the Nation's land.

~~n.p. Land Development Team. The Nation's Land Development Team ("LDT"), or Land Planning Commission upon its enactment.~~

o.q. Lease. A written contract between the Nation and a Lessee, whereby the Lessee is granted a right to possess the Nation's land, for a specified purpose and duration. The Lessee's right to possess will limit the Nation's right to possess the leased premises only to the extent provided in the lease.

p.r. Lessee. A person or entity who has acquired a right to possess the Nation's land by executing a Lease.

q.s. Leasehold Estate. The possessory interest in the Nation's land established pursuant to a Lease between a Lessor and a Lessee.

r.t. Leasehold Mortgage. A mortgage, deed of trust, or other instrument that pledges a Lessee's leasehold interest as security for a debt or other obligation owed by the Lessee to a lender or other mortgagee.

~~s.u. Leasing Office. The Nation's Leasing Office.~~

t.v. Legislature. The Ho-Chunk Nation Legislature.

u-w. Lessor. The legal, beneficial, or equitable owner of the Nation's land subject to a Lease, including the Nation, and any heir, successor, executor, administrator, or assign of the Lessor.

v-x. LTRO. The Land Titles and Records Office of the Bureau of Indian Affairs.

w-y. Material Breach. A breach of contract that is significant enough to permit the aggrieved party to elect to treat the breach as a total thus excusing that party from further performance and affording it the right to sue for damages.

x-z. Nation's land. Any tract, in which the surface estate is owned the Nation 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).

y-aa. NEPA. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

z-bb. Permanent Improvements. Buildings, other structures, and associated infrastructure attached to the Nation's land.

aa-cc. Public. Includes enrolled members of the Ho-Chunk Nation, and other persons as authorized by the Legislature, Executive Branch, Judiciary, or General Council to attend a meeting.

dd. Real Property. The Nation's property that is land or land and building.

bb-ee. Record of Decision. A document that explains the Nation's decision to any Significant Effect on the Environment of the intended use of the premises and describes the alternatives considered and discusses plans for mitigation and monitoring, if necessary.

ee-ff. Secretary. The Secretary of the Interior.

dd-gg. Significant Effect on the Environment. A substantial, or potentially substantial, adverse change on the environment.

ee-hh. Sublease. A written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the lease.

ff-ii. Trespass. Any unauthorized occupancy, use of, or action on the Nation's land.

gg-ji. Trust or restricted land. Any tract, held in trust or restricted status.

hh-kk. Trust or restricted status.

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

(2) That the Nation 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.

§.11. Violation. A failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of our enforcement of a lease under this part no matter how “violation” or “default” is defined in the lease.

**CHAPTER II – APPROVAL OF LEASE,
REQUIREMENTS, PROCESS, PAYMENT,
TERMINATION, FORFEITURE, EXTENSIONS,
AND RECORDING**

10. Approval of Leases.

- a. All leases are subject to the approval of the Legislature.
- b. All leases shall be signed by the Vice-President of the Ho-Chunk Nation.
- c. After the Secretary approves this Code, all leases which are approved and executed under this Section shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.
- d. Any lease which is approved and executed under this Section shall refer to this Code as authority for its execution on behalf of the Nation.

11. Lease Requirements.

- a. All leases shall be in writing, and at a minimum, shall:
 - (1) Describe the tract or parcel of the Nation’s land that is being leased and where it is located with reference to a public or private survey plan, if available, in terms sufficient to determine the location;
 - (2) State the purpose of the lease and authorized uses of the premises;
 - (3) Identify the parties to the lease;
 - (4) State the effective date and term of the lease, which shall not exceed twenty-five (25) years except that any such lease may include an option to renew for up to one (1) additional term, which may not exceed twenty-five (25) years. The lease shall include any additional consideration, or other conditions for renewal, that will be due upon exercise of the option to renew. The Lessee shall notify in writing to the Division of Leasing-Realty Office of the intent to renew at least ninety (90) days before such lease is due to expire;
 - (5) Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest; in a form of acceptable payment;
 - i. If the lease requires rental reviews or adjustments over the lease term, the lease must:
 1. State how adjustments are made;
 2. State who makes the adjustment;
 3. When the Adjustment is effective; and
 4. How the disputes about adjustments are resolved.

(6) State, if leased land is within an irrigation district, the following:

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

(7) State the due diligence and insurance requirements that apply, if any;

(8) A performance bond shall not be required;

(9) If a Lease authorizes the Lessee to make Permanent Improvements during the term of the Lease the Lease shall identify the general type of each improvement by providing a building plan, construction schedule, and the location of the improvement, and the responsibility for constructing, operating, maintaining, and managing the Permanent Improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any Permanent Improvements not described in the lease.

(10) State whether there will be rental reviews or adjustments, how and when they will be done, when any adjustments will be effective, and how disputes regarding adjustments will be resolved;

(11) State the process for amendment, which shall be in writing, signed and approved by both parties;

(12) State the governing law, which may include the Nation's laws and applicable federal statutes and regulations; and

(13) Include or attach supporting documents, if necessary, including the following:

(a) If the Lessee is a corporation, partnership or other legal entity, it must provide organizational and financial documents, as needed to show that the lease will be enforceable against the Lessee and the Lessee will be able to perform all of its lease obligations.

(b) The Lessee, when appropriate, must provide environmental and archaeological reports, surveys, and site assessments, as needed, to document compliance with NEPA and other applicable federal and tribal land use requirements.

(14) Include or attach all other provisions required under any applicable federal statutes or regulations, ~~including without limitation, each of the required terms for leases set forth in 25 C.F.R. 162.219.~~

(15) State that agricultural land under the jurisdiction of a Nation must be managed in accordance with the goals and objectives of agricultural resource management plan and/or conservation plan developed by the Nation, if any, or by the BIA in close consultation with the Nation, under AIARMA.

12. Lease Application Process.

a. Land Use and Site Planning: Agricultural leases are issued only for properties identified appropriate for Agricultural development within the Nation's Land Use Plan and should be consistent with the Nation's official zoning map. Prior to approval of an Agricultural lease, an acreage map will be provided to the Division of Leasing-Realty Office as a plan-of-record.

b. Site Availability: The Division of Leasing-Realty Office will maintain grid maps for property which the Legislature has approved for agricultural development.

c. Initial Screening: Division of Planning and Development ("Planning") staff will verify in writing to the Leasing-Department of Administration Office that land is zoned agricultural.

d. Pre-application: Applicant requests assistance in acquiring an Agricultural lease from the Division of Leasing-Realty Office. After the applicant identifies an agricultural site, the Division of Leasing-Realty Office confirms that the parcel is available for lease and appropriately zoned. Planning must be consulted to address potential plan amendments, rezoning, or other land-use regulations. A preliminary site evaluation may be completed by the appropriate entities of the Nation.

e. Application Submittal: Applicant submits a completed application to the Division of Leasing-Realty Office (see completed application requirements). The Division of Leasing-Realty Office retains the original application. The application is stamped in with submitted ~~time and~~ date and expires three (3) months from the stamped date if no action is taken.

f. Application Review: The Division of Leasing-Realty Office staff will review the application for completeness. Incomplete applications will be returned to the Applicant with a letter outlining information necessary to move the application forward. Completed applications are filed with the Division of Leasing Office Realty.

g. Agricultural Lease Approval: Once the lease application is complete, the Division of Leasing-Realty Office will draft a standard Agricultural Lease per the requirements under Section 11 of this Code. The Division of Leasing Office Realty staff will send the proposed Agricultural Lease to the Land Development Team ("LDT")/Land Planning Commission for review. The LDT/Land Planning Commission will make an advisory recommendation to the Legislature. The Legislature will approve or deny the Agricultural Lease. Formal ratification by the Legislature is required prior to moving forward with the Agricultural Lease. The Legislature may table the Agricultural Lease pending additional information, if needed. The Vice-President will sign ~~two~~

~~(2)an~~ original completed Agricultural Leases and forward the approved lease to the Division of Leasing-OfficeRealty -with a copy of the Legislative Resolution authorizing the Agricultural Lease. Legislature shall provide ~~both an original a copy of the~~ signed Legislative Resolution and original signed Agricultural Lease to the Division of Leasing-Realty-Office. ~~Leasing-The Division of Realty Office~~ will record and retain the ~~original~~ documents in a lease file.

13. Payment.

a. For any Lease requiring payments to be made to the Nation the Nation shall provide the Secretary with such documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that:

(1) The United States shall not be liable for losses sustained by any party to a lease executed; or

(2) Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Nation under Federal law (including regulations), the Secretary may, upon reasonable notice from the Nation and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Nation.

14. Termination of Lease.

a. The lease may naturally terminate when the purpose of the Lease is complete or as mutually agreed upon by both parties.

b. In the event that conditions beyond the reasonable control of Lessor, which in Lessor's sole discretion cause Lessor to believe, in good faith, that this Lease cannot be reasonably performed by either party, Lessor may terminate the Lease, without penalty, at any time.

c. Grounds for termination of this Land Lease include, but are not limited to:

(1) Default of an expressed condition precedent;

(2) Manifestation of an expressed condition subsequent;

(3) Material breach by Lessee; or

(4) Material breach by Lessor.

d. Upon expiration or termination of the Lease, the Lessee shall, upon demand, surrender to the Lessor complete and peaceable possession of the property and all improvements thereon shall become the property of the Lessor.

15. Trespass. If an individual or entity takes possession of, or uses, the Nation's land without a lease and a lease is required, the Nation may treat the unauthorized possession or use as a trespass.

The Nation may take action to recover possession and pursue any additional remedies available under applicable law.

16. Forfeiture of Lease. A Lessee may forfeit their lease by obtaining a Lease Cancellation Form from the Division of Leasing Office Realty. The Lessee must submit a signed, notarized original to the Division of Leasing Office Realty. The Division of Leasing Office Realty will forward the form along with a proposed resolution rescinding the lease to the Legislature for action. If the resolution is executed, it is filed with the Division of Leasing Realty Office. ~~The property will then be offered in accordance with the Selection Review section of the lease process. If the forfeiture is denied the lease shall remain in full force and effect.~~

17. Lease Renewal. The Division of Leasing Office Realty will review requests for lease renewal on a case-by-case basis.

18. Recording. The Division of Leasing Office Realty will administer the execution of the lease. Lessee shall be required to pay lease rent as is indicated by lease. Following signing and payment of rent, ~~the Division of Leasing Realty Office~~ will record and provide a certified copy to the Lessee. Original documents will be maintained by Division of Leasing Office Realty and with the Bureau of Indian Affairs Land Titles and Records Office (LTRO) with jurisdiction over the Nation.

19. Ownership of Records. Records of activities taken pursuant to this Code are the property of the Nation.

CHAPTER III – PURPOSE OF REVIEW, REQUIREMENTS FOR APPROVAL, CATEGORICAL EXCLUSIONS, AND ENVIRONMENTAL

20. Purpose of Review. The purpose of this Section is to establish an environmental review process that satisfies the requirements of 25 U.S.C. 415(h)(3)(B)(ii). ~~this Code.~~

21. Requirements for Approval

a. The Legislature shall not approve a lease under Section 10 of this Code unless:

(1) ~~The LDT/Land Planning Commission has determined what responsible entity shall conduct an environmental review. The entity chosen shall have Ho-Chunk Nation Division of Natural Resources (DNR) has reviewed the lease and such other information as may be necessary to identify and evaluate any Significant Effect on the Environment of the intended use of the premises, and has:~~

(a) Documented findings of the review and subsequent determinations in an Environmental Review Record for said lease

(b) Made a determination that the uses authorized by the lease are included within the categorical exclusion stated in Section 22 and provided that determination in writing to the ~~Leasing Office~~LDT/Land Planning Commission; or

(~~cb~~) Issued a final decision after following the procedure set forth in Section 23;

(2) The ~~DNR-responsible entity~~ has provided the ~~Leasing Office~~ LDT/Land Planning Commission with notice that the Nation has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 23.

22. Categorical Exclusions.

a. The Legislature hereby finds that the following actions does not individually or cumulatively have a Significant Effect on the Environment, and therefore, except as otherwise provided in subsection 22(b), are categorically excluded from the procedures set forth in Section 23:

(1) Approval of a lease for five (5) acres or less of contiguous land for construction and Agricultural use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.

b. Notwithstanding subsection 23(a), the ~~DNR-responsible entity~~ shall follow the procedures set forth in Section 23 if it determines that extraordinary circumstances exist under which the Agricultural use of the premises may, individually or collectively, have a Significant Effect on the Environment, including without limitation, as set forth below:

(1) Substantial controversy on environmental grounds;

(2) Presence of cultural resources; or

(3) Presence of historic ~~propert~~ities.

23. Environmental Review

a. Unless a categorical exclusion applies, the ~~DNR-responsible entity~~ shall prepare a preliminary Environmental Assessment to cause the effects ~~on the environment~~ of the intended uses authorized by the proposed lease on the environment to be identified and evaluated as follows:

(1) If the ~~DNR-responsible entity~~ determines that the uses authorized by the proposed lease will not have a Significant Effect on the Environment, then it shall cause the following to occur in order set forth below:

(a) ~~(a)~~ A notice of Finding Of No Significant Impact (FONSI) on the environment shall be issued and posted for a minimum of fifteen (15) calendar

days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Ho-Chunk Nation website.

~~(a)~~

~~(b) (a) Written comments on the FONSI may be submitted within fifteen (15) days of the issuance of the notice. If there is a substantial interest in holding a public meeting it shall be held in accordance with 2 HHC § 2.5 to provide an opportunity for Nation members and non-members to comment, both written and verbal, on the finding of no significant impact.~~

(c) Comments shall be reviewed and analyzed and a final Environmental Assessment report shall be issued by the DNR-responsible entity responding to relevant and substantive comments, if any, regarding the ~~finding of no significant impact~~FONSI. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Ho-Chunk Nation website.

(d) Unless subsection 23(a)(2) applies a ~~final decision~~Record of Decision ~~on~~ confirming that the uses authorized by the proposed Lease are expected to have no Significant Effect on the Environment shall be issued, sent to the Legislature for approval, and posted for fifteen (15) calendar days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Nation's website.

(2) If the DNR-responsible entity determines that the proposed lease will have a Significant Effect on the Environment then it shall cause the following to occur in the order set forth below:

~~(a)~~ ~~(a)~~—A draft comprehensive environmental review will be completed which identifies and evaluates any Significant Effect ~~on~~ the Environment ~~of~~ and consideration of alternatives, mitigation and/or remediation measures.

~~(a)~~(b) The draft comprehensive environmental review report uses authorized by the proposed lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Nation's website;

~~(c)~~ A meeting-public shall ~~it shall~~ be held in accordance with 2 HHC § 2.5 on the draft comprehensive environmental review to provide an opportunity for

Nation members ~~and residents on the Nation's land~~ to comment, both written and verbal, on any Significant Effect on the Environment of the uses authorized by the proposed Lease and the alternatives, mitigation and/or remediation measures that have been identified;

~~(de) Written cComments may be submitted within fifteen (15) calendar days of the posting of the report. Comments shall be reviewed and analyzed and relevant and substantive comments will incorporated into a final comprehensive environmental review report prepared by the responsible entity. a report by the DNR shall be issued responding to relevant and substantive comments, if any, on any Significant Effect on the Environment of the uses authorized by the proposed lease. The report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building;~~

(d) ~~The~~A final comprehensive environmental review report describing the conclusions ~~of the DNR report~~ on the issues and evidence gathered under this Subsection shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Nation's website; and

(e) A ~~final~~ Record of Ddecision explaining the Nation's determination assessing-on the potential for any Significant Effect on the Environment associated and describing the alternatives considered and any necessary plans for mitigation and monitoring with the uses authorized by the lease shall be issued, sent to the Legislature for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Nation's Executive Office Building, appropriate Nation facility within the community where the lease is located, in the Hocak Worak, and on the Nation's website.

CHAPTER IV – APPROVAL OF SUBLEASE AND ASSIGNMENT, REQUIREMENTS, AND RECORDING

24. Approval of Sublease and Assignment.

a. All Subleases and Assignments, other than to a Mortgagee, shall be subject to the approval of the Legislature in a manner consistent with the Nation's Constitution and laws.

b. All Subleases and Assignments which are subject to the approval of the Legislature shall be signed ~~on behalf of~~by the Vice-President.

c. After the Secretary approves this Code, all Subleases and Assignments which are approved and executed under this Section shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.

d. All Subleases and Assignments shall require the prior approval of any Mortgagee or Surety, if required by the Mortgage or Surety Agreement.

25. Requirements.

- a. A Lessee may sublease the Nation's land in accordance with this Section.
- b. A Lessee may assign a lease in accordance with this Section.
- c. No Sublease shall relieve the Lessee or sublessor of any liability under the lease.

d. In any Assignment, other than to a Mortgagee of the Leasehold Estate, the assignee must agree in writing to assume all of the obligations and conditions of the lease, and that the lease is subject to all applicable laws.

26. Recording. All Subleases, ~~and Assignments,~~ and amendments thereto shall be recorded and maintained by the Division of Leasing-Realty Office with copies provided to the LTRO with jurisdiction over the Nation's land.

**CHAPTER V – APPROVAL OF
LEASEHOLD MORTGAGES AND RECORDING**

27. Approval of Leasehold Mortgage.

a. All Leasehold Mortgages under a lease must be separately authorized by the Legislature, unless the lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

b. After the Secretary approves this Code, all Leasehold Mortgages which are authorized under this Section shall be effective without federal approval under 25 U.S.C. 415 unless the Secretary rescinds approval of this Code and reassumes responsibility for such approval.

28. Recording. All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded and maintained at the Division of Leasing-Realty Office and with copies of the Leasehold Mortgages and related documents provided to the LTRO with jurisdiction over the Nation's land, to the extent required by a Mortgagee. ~~A Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.~~

**CHAPTER VI – COMPLAINT, FORM OF COMPLAINT,
INFORMAL RESOLUTION, DECISION, APPEAL, AND
NO WAIVER OF SOVEREIGN IMMUNITY**

29. Complaint. An Interested Party who has reasonable grounds to believe that the Nation has failed to comply with this Code has the right to file a Complaint under this Section.

30. Form of Complaint. The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Code, which is the subject of the Complaint, state all relief requested and submitted to the ~~Executive Director of Heritage Preservation~~Attorney General.

31. Informal Resolution. The ~~Executive Director of Heritage Preservation~~Attorney General shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. All Complaints which are resolved through such informal resolution shall be reduced to writing and signed by the ~~Executive Director of Heritage Preservation~~Attorney General and the Interested Party.

32. Decision. If the Complaint is not resolved informally, the ~~Executive Director of Heritage Preservation~~Attorney General shall issue a decision on the Complaint, which shall be in writing and signed by the ~~Executive Director of Heritage Preservation~~Attorney General. ~~The Executive Director of Heritage Preservation~~Attorney General 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 ~~Executive Director of Heritage Preservation~~Attorney General shall constitute a final decision.

33. Appeal. In accordance with 25 U.S.C. 415(h)(8)(A), an Interested Party who has exhausted the Nation's remedies set forth in this Section may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the Nation's compliance with this Code.

34. No Waiver of Sovereign Immunity. Nothing in this Code shall be deemed to waive the sovereign immunity of the Nation or any of its officials, employees, or representatives.

Legislative History:

- 09.03.13 Legislature adopts resolution 09.03.13E placing the Agricultural Leasing Code out for forty-five day public comment.
- 12.17.13 Legislature adopts resolution 12.17.13E Approving and Enacting the Agricultural Leasing Policy Pursuant to the HEARTH Act.
- 11.18.14 Legislature rescinds and restates resolution 12.17.13E via resolution 11.18.14E.
- 02.04.15 Bureau of Indian Affairs approves the Agricultural Leasing Code (8 HCC § 9).