RESOLUTION OF THE
ECONOMIC DEVELOPMENT COMMITTEE
OF THE NAVAJO NATION COUNCIL

20th NAVAJO NATION COUNCIL - FOURTH YEAR 2006

AN ACTION
LEGISLATION NO. 0896-06

RELATING TO ECONOMIC DEVELOPMENT; APPROVING AND ADOPTING
AMENDMENTS TO THE NAVAJO NATION BUSINESS SITE LEASING
REGULATIONS OF 2005 AS ADOPTED JULY 24, 2006 (EDCJY-III-06)

BE IT ENACTED:


2. The Economic Development Committee of the Navajo Nation Council hereby approves and adopts the amendments to the Navajo Business Site Lease Regulations of 2005 (EDCJY-111-06) as found in detail in Exhibit "A" attached and made a part hereto.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Economic Development Committee of the Navajo Nation Council at a duly called meeting at St. Michaels, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 6 in favor and 0 opposed, this 3rd day of January 2007.

Lawrence R. Platero, Chairperson
Economic Development Committee

MOTION: Alice White
SECOND: Tommy Tsosie
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Navajo Nation Business Leasing Regulations of 2005

Authority:

The Navajo Nation Trust Land Leasing Act of 2000, 25 U.S.C. § 415(e), P.L. 106-568, December 27, 2000, authorizes the Navajo Nation to develop regulations and issue leases without the approval of the Secretary, provided such regulations are consistent with the Secretary's regulations. According to the Congressional Report, the tribal regulations need not be identical to the Secretary's regulations but may reflect the Nation's special needs and circumstances. See Senate Reports: No. 106-368 accompanying S. 1658 (Committee on Indian Affairs); Congressional Record, Vol. 146 (2000), and H.R. 5528.

The Navajo Nation Council's Economic Development Committee (E.D.C.) of the Navajo Nation Council is authorized by its enabling legislation, the Navajo Nation Business Site Leasing Act of 2000, 2 Navajo Nation Code (N.N.C.) § 724, and 5 N.N.C. § 2301-2306; and the Navajo Nation Local Governance Act codified at Title 26 N.N.C., and any enabling legislation of its local governmental units, to promulgate business site leasing regulations for the Nation's business site leasing program. These regulations satisfy the tribal statutory requirements and thus are tribal regulations.

Subchapter 100 General Provisions

§101 Purpose and Applicability

A. The purposes of these regulations are to:

1. Recognize the authority of the Navajo Nation to issue business site leases, and establish streamlined procedures for environmental review, approval, management and enforcement of leases;

2. Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Navajo Nation;

3. Implement the Navajo Nation Trust Land Leasing Act of 2000, and

4. Implement the Navajo Nation Business Site Leasing Act, the Navajo Nation Local Governance Act and the enabling legislation of other local government units; and
B. The Navajo Nation Business Site Leasing Act mandates certain provisions to protect and preserve Navajo Nation trust land, provisions for trust asset accounting, provisions for record keeping and title recording, and provisions for modern leasing practices. Accordingly, Subchapter 400 of these regulations set forth the business site leasing management system.

§102 Title

The regulations shall be referred to as the Navajo Nation Business Site Leasing Regulations of 2005.

§103 Definitions

A. For purposes of these regulations:

1. Assignment means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all the lessee's obligations under a business site lease.

2. Approving Entity means the governmental entity that has statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Navajo Nation, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases, and lease terminations. The Navajo Nation Business Site Leasing Act of 2005 gives the Economic Development Committee the power to act in the capacity of the Approving Entity.

3. Best interest of the Navajo Nation means the balancing of interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Navajo Nation trust land, increasing employment and jobs on the Navajo Nation, and preserving the sovereignty of the Navajo Nation.

4. Bond means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or by a third-party surety.

5. BIA means the Bureau of Indian Affairs, United States Department of the Interior.

7. **Change in land use** means the change from residential to non-residential, commercial to industrial, or one industrial to another that significantly differs from the former use.

8. **Development period** means the time period from when a lease is executed to when improvements are expected to be substantially completed.

9. **Economic Development Committee (EDC)** means the Oversight Committee that has the statutory authority to give final approval for all business site leases and has authority to delegate some or all of its statutory authority to agencies within the Navajo Nation.

9A. **Environmental Reviewer** is the employee of the Division of Economic Development that has the authority set forth in §811, which authorities are provided pursuant to the Master Plan of Operation for the Division of Economic Development.

10. **Equity** means value of a business or a property, over and above the indebtedness against it, and includes tangible and intangible assets, including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure, and equipment.

11. **Executing Official** means the Navajo Nation President or Division of Economic Development Division Director, if properly delegated, who shall execute all business site leases on the Navajo Nation and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases.

12. **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 specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

   a. Lessee and lessor are typically motivated;

   b. Both parties are well informed or well advised, and acting in what they consider their best interests;

   c. A reasonable time is allowed for exposure in the open market;
d. The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and

e. The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

13. Governance-Certified Chapter means a Navajo Nation chapter that has obtained certification of its "Five Management System" pursuant to the Navajo Nation Local Governance Act.

14. Human Environment means the connection between the people and their environment.

15. Interested party means a person whose interest is adversely affected by the Managing Entity's leasing decision.

16. Lease means a written agreement or contract between the Lessor and a Lessee, wherein the lessee is granted a right to possess Navajo Nation trust land for a specific purpose and duration. Pursuant to 5 N.N.C. § 2303. F., a "Lease" also means a business lease, permits and licenses granting land use privileges in Navajo Nation trust land for business purposes. The written contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.

17. Leasing Decision in the context of the Environmental Review Process means the following types of lease transactions that will be acted on by the Approving Entity: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, and tenant leases.

18. Lessee means a person to whom property (Navajo Nation trust land) is leased under a Lease. One who has the right to use or occupy a property under a lease agreement, e.g., the leaseholder or tenant.

19. Lessor means the Navajo Nation who holds property title and conveys the right to use and occupy the property under a lease agreement.

20. Local Government Unit means a governance-certified local government, with a certified land use plan, acting in conformance with these regulations and the regulations promulgated by the applicable standing committee of the Navajo Nation Council. A local government includes governance-certified chapters, municipal forms
of governments, and alternative forms of governments. Additionally, it refers to
townships that have been delegated the authority to approve business site leases.

21. **Managing Entity** means the governmental entity that has statutory authority to manage
all business site leases, in accordance with an approved business site leasing
management plan.

22. **Mortgage** means a written *instrument* that creates a *lien* upon real estate encumbered
in a business site lease as security for the payment of a specified debt.

23. **Navajo Nation** means the Navajo Nation Government.

24. **Navajo Nation Environmental Review (NNER)** comprises all of the documents
relevant to the Environmental Review Process for a specific Leasing Decision. The
Record is maintained by the Environmental Reviewer, and will be provided to the
Approving Entity.

25. **Navajo Nation law** means the body of law governing the land and activities occurring
within the jurisdiction of the Navajo Nation.

26. **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 reserved for
federal purposes; land held by the United States in trust for a Navajo Nation
corporation chartered under Section 17 of the *Indian Reorganization Act*.

27. **OST** means the Office of Special Trustee for American Indian, U.S. Department of the
Interior.

28. **Permit** means a written agreement between the Navajo Nation and the applicant for the
permit, also referred to as a permittee, whereby the permittee is granted a revocable
use privilege to use Navajo Nation trust land for a specified purpose.

29. **Petition** means a written request submitted to the Secretary, after exhaustion of tribal
remedies, for the review of an action (or inaction) of the Navajo Nation that is claimed
to be in violation of the approved tribal leasing regulations.

30. **Secretary** means the Secretary of the Interior, U.S. Department of the Interior, or its
authorized representative.
31. *Sublease* means a written agreement by which the lessee grants a person a right of possession no greater than that held by the lessee under a business site lease.

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

§104 Scope

A. These regulations apply to all business site leases (existing and future) approved under the authority of 25 U.S.C. § 415, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

B. Business site leases are mandatory for all businesses operating from a permanent structure or fixed location, advertising itself as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by law. Failure to comply with this section shall be addressed pursuant to Navajo Nation law.

§105 Effective Date

These regulations shall take effect upon approval by the Secretary or authorized designee.

§106 Approval

The Lessor may issue a business site lease or permit, which is subject to approval from the Approving Entity and execution from the Executing Official so long as the lease complies with these regulations, and is in the Best Interest of the Navajo Nation.

§107 Choice of Law

All disputes over leases shall be resolved under the laws of the Navajo Nation. Nothing in these regulations shall be construed to waive the Navajo Nation's sovereign immunity.

§108 Duration and Renewal

No lease shall be approved more than 12 months prior to the commencement of the term of the business site lease. The term of the Lease shall not exceed 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 25 years. The lessee shall notify the Managing Entity of the intent to renew, at least one year before the lease is due to expire.
Subchapter 200 Obtaining a Business Site Lease

§201 Information

Information on obtaining business site leases shall be available at the Navajo Nation Division of Economic Development (DED), Navajo Nation Shopping Centers, Inc. and the respective local government unit.

§202 Supporting documents

All applicants for business site leases shall submit the following documents to the Managing Entity: (1) financial statement; (2) site survey and legal description, if applicable; (3) environmental review; and (4) other documents as may be required by the business site leasing management plan.

§203 Records

A. The Managing Entity shall record business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the:

   Land Title and Records Office
   Southwest Regional Office
   Bureau of Indian Affairs
   P.O. Box 26567
   Albuquerque, NM 87125-6567

B. The Managing Entity is responsible for disseminating recorded lease documents as follows:

   • Navajo Nation Division of Economic Development
   • Navajo Nation Records Management Department
   • Navajo Nation Office of the Controller
   • Navajo Land Department
   • The Lessee
   • Navajo Nation Shopping Center, Inc. (if applicable)

C. A copy of the lease and all amendments and renewals shall also be sent for information only to the Secretary of the Interior, Bureau of Indian Affairs, Navajo Regional Office, the respective 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 offices are:
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<thead>
<tr>
<th>Agency</th>
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<tbody>
<tr>
<td>Chinle Agency</td>
<td>Real Estate Services</td>
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<tr>
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<td>P.O. Box 7H</td>
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<td></td>
<td>Chinle, AZ 86503</td>
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<tr>
<td>Eastern Navajo Agency</td>
<td>Superintendent</td>
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<td>Attention: Real Estate Services</td>
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<td>P.O. Box 328</td>
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<td>Crownpoint, NM 87313</td>
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<td>Fort Defiance Agency</td>
<td>Real Estate Services</td>
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<td></td>
<td>P.O. Box 619</td>
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<td>Ft. Defiance, AZ 86504</td>
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<td>Real Estate Services</td>
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<td>P.O. Box 127</td>
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<td>Tuba City, AZ 86045</td>
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§204 Ownership of Records

Records of activities taken pursuant to these regulations are the property of the United States and the Lessor and its local governmental units. Records compiled, developed or received by the Lessor in the course of business with the Secretary, are the property of the Lessor.

Subchapter 300 Business Site Lease Requirements

§301 Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in Part II of the Navajo Nation Business Site Lease Form, or equivalent document. The standard terms and conditions may be modified only with the approval of the Economic Development Committee of the Navajo Nation Council. The Lessee is responsible for understanding these terms and conditions.

§302 Land Descriptions

Business site leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular, or lot and block systems.
§303 Appraisal, Local Studies

A. The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by the Managing Entity utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every business site lease.

B. 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 commonly accepted method of appraisal. An appraisal log describing the method of appraisal and value of trust land shall be attached to every business site lease.

C. For the first year these regulations are in effect, appraisals may be submitted to the OST's Navajo Region, Branch of Appraisal, for a determination as to whether the appraisal meets the requirements of these regulations. If the Branch fails to make a determination within 15 days of receipt of the appraisal, the appraisal shall be considered proper. After the first year, the Managing Entity may obtain technical assistance from the OST's Appraisal Office.

§304 Environmental Review Process

The Approving Entity shall not approve a business site lease until the proposed business site lease has completed the NNER Process. Leases approved and executed without compliance with this section shall be null and void.

§305 Fair Annual Lease Value

A. No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

1. The lessee is in the development period;

2. The Managing Entity is providing an incentive for businesses to locate on the Navajo Nation, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or

3. The Managing Entity determines such action is in the Best Interest of the Navajo Nation.
B. A lease may be structured at a flat lease rate.

C. A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center or mall, or the lessee generates over $1,000,000.00 in gross receipts.

D. A lease may be structured based on a percentage of gross receipts, or based on a market indicator.

E. The lease shall provide for periodic review at least every five years. Such review shall give consideration to the economic conditions, exclusive of improvement or development required by the contract or the contribution value of such improvements.

F. 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.

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

H. The Managing Entity shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

§306 Bond

A. The lessee shall obtain a satisfactory surety bond in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing.

   1. The annual lease payment;

   2. The estimated development cost of improvements; and

   3. Any additional amount necessary to ensure compliance with the lease.

B. The Managing Entity may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Navajo Nation. The Managing Entity shall maintain written records of waivers and reductions.
§307 Insurance

The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of "A" or equivalent, and authorized to do business in the state where the premises is located. It shall cover property business interruption, liability and casualty. The amount shall be sufficient to cover the improvements, personal injury or death, and the loss of the lessee and the United States. The insurance shall expressly identify the Lessor and the United States as the insured parties.

§308 Improvements

A. Improvements to the premises shall become the property of the Lessor, unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal.

B. A lessee may develop equity value in the improvements, and sell its interest in the lease based on the equity value. The Lessor has a right of first refusal to purchase the interest.

C. The lease may provide that at expiration, cancellation or termination of the lease, the Lessor shall purchase improvements to the premises at fair market value.

§309 Subleases, Assignments, Amendments and Encumbrances

A. Subleases, assignments, amendments or encumbrances of any lease shall be by written consent of the Lessor and Lessee, as well as the sureties, unless otherwise provided herein.

B. The lease may authorize subleases, in whole or in part, without approval from the Approving Entity and execution from the Executing Official, provided a copy of the sublease is provided to the Managing Entity. This in no way relieves the parties from carrying out their duties under the lease.

C. The lease may authorize encumbrances to the leasehold interest for the purpose of financing to develop and improve the premises. Approval by the Approving Entity and execution from the Executing Official is required. If a sale or foreclosure occurs and the encumbrancer is the purchaser, the encumbrancer may assign the lease without approval of the Approving Entity or lessee, provided the assignee agrees 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 Approving Entity and execution from the Executing Official is required, provided the purchaser agrees in writing to be bound by all the terms and conditions of the lease.
Subchapter 400 Business Lease Management

§401 Management

A. The Managing Entity shall manage both existing business site leases, as well as those executed pursuant to these regulations.

B. The Managing Entity shall institute a business site leasing management plan that employs sound real estate management practices, addresses accounting, collections, monitoring, enforcement, relief, and remedies.

C. Local Government Units shall institute a business site leasing management plan in order to exercise management authority and such authority shall remain with the Navajo Nation until the Local Government Unit has obtained proper delegation to approve business site leases, from the Approving Entity, except that leases executed prior to the local government unit obtaining management authority will require lessee consent.

§402 Accounting

A. The Managing Entity shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and dates of when rate adjustments should be made.

B. The system shall include the following information: name of lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts, cancellation efforts, balance due, cumulative payments and cumulative balance due.

C. The Managing Entity shall provide an annual accounting to the Navajo Nation Office of the Controller and the Secretary.

D. Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

§403 Administrative Fees

The Managing Entity may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.
Subchapter 500 Enforcement

§501 Enforcement

A. The Managing Entity shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, with or without notice, assess penalties, and assess late payments.

B. The Managing Entity may request the Navajo Nation Office of the Attorney General to assist in enforcement of leases and these regulations.

§502 Defaults

A. If the Managing Entity determines the lessee is in default, the Managing Entity shall send the lessee a notice of default within a reasonable time of the determination. The notice of default may be provided by certified mail, return receipt requested.

B. Within ten days of the mailing, the lessee shall:

1. Cure the default and notify the Managing Entity in writing that the default has been cured;

2. Dispute the Managing Entity's determination that the lease is in default and explain why the lease should not be canceled; or

3. Request additional time to cure the default.

§503 Remedies

A. If the lessee fails to cure the default within the prescribed time period, the Managing Entity may:

1. Cancel the lease pursuant to these regulations;

2. Grant an extension of time to cure the default;

3. Pursue other remedies, including execution on bonds or collection of insurance proceeds;
4. Any combination of remedies listed above; or

5. Any other remedy set forth in the business site lease management plan.

B. If the Managing Entity cancels the lease, the Managing Entity shall send the lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

1. Explain the grounds for cancellation;

2. Notify the lessee of unpaid amounts, interest charges, or late payment penalties due under the lease;

3. Notify the lessee of its right to appeal; and

4. Order the lessee to vacate the premises within 30 days of the mailing of receipt of the cancellation letter, if an appeal is not filed by that time.

C. A cancellation shall become effective 31 days after mailing. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

D. If the Managing Entity decides to grant an extension of time to cure a default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

§504 Penalties

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

§505 Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Managing Entity or other party may take appropriate emergency action, which includes securing juridical relief.
§506 Holdover

If a lessee remains in possession after the expiration or cancellation of a lease, the Managing Entity shall treat such occupation as a trespass. The Managing Entity shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to tribal laws, or the Managing Entity may request the BIA for resolution under federal laws; such request shall be in writing by certified mail.

§507 Trespass

If a person occupies the premises without the Managing Entity's approval, the Managing Entity may pursue appropriate remedies, including the filing of a trespass action to regain possession under Navajo Nation law.

Subchapter 600 Appeals

§601 Appeals

A. The lessee or interested party may appeal a determination of the Managing Entity, within ten days of the determination. Appeals may be filed with the Navajo Nation's Office of Hearings and Appeals (OHA), or other hearing body as set forth in the business site lease management plan. Such appeals shall be effectuated by: the filing of an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstance of the appeal, and a short statement indicating the remedy being sought.

B. An appeal bond shall protect the party whose remedy has been stayed, 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 cancellation appeal.

C. The OHA or other hearing body shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law.

§602 Appeals to the Navajo Nation Supreme Court

Decisions of the hearing body, or the OHA, may be appealed to the Navajo Nation Supreme Court. Review shall be limited to issues of law and the record. De novo review is not allowed.
Subchapter 700 [Reserved]

Subchapter 800 Environmental Review Process

§801 [Reserved]

§802 Threshold Determination

i. Lessee Not Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision by its nature would not affect the biological and cultural resources of the Navajo Nation, the Leasing Decision is exempt from additional requirements of the Environmental Review Process, subject to the environmental record requirements of §810.

ii. Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter, iii) disturb, or iv) otherwise cause physical disturbances to the biological or cultural resources of the Nation, 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.

§803 Action on Leasing Decision Subject to Completion of ERP

If the ER determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Entity may not consider the Leasing Decision until the Environmental Reviewer closes the ERP in accordance with §812.

§804 Lessee Responsible for Environmental Compliance Determinations

a. The Lessee, as the entity that will occupy and operate a business on the leased land, is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, Lessee must provide to Environmental Reviewer, with respect to each of the environmental laws listed below, if applicable, a Compliance Determination for the Leasing Decision:

- National Historic Preservation Act
- Floodplain Management
- Wetlands Protection
- Endangered Species Act
- Air Quality
b. Lessee's responsibility to comply with these laws is in addition to and separate from its obligations under this Subchapter, and Lessee's compliance obligations under those laws are not extinguished upon complying with the ERP.

c. Lessee's obligation to provide the Environmental Reviewer with Compliance Determinations is not complete until the ER, in accordance with §807, has determined that the Lessee has completed the Compliance Determination process.

§805 Compliance Determinations

a. The Lessee may request a Compliance Determination from the appropriate Navajo Nation department, as determined by the Environmental Reviewer in accordance with § 813, and for providing that department with the information it requires to make the Compliance Determination.

b. The Compliance Determination must clearly describe the Leasing Decision under consideration, and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the Lessee requests a Compliance Determination.

c. The Compliance Determination must also include a finding by the relevant Navajo department as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

d. A Navajo department's completion of the Compliance Determination will be timely if the ER receives the Compliance Determination within 20 working days after the later of two events:

i. the Navajo department's receipt of Lessee's request for a Compliance Determination or
ii. the Navajo department's receipt of information it requires to complete the Compliance Determination.

e. If the Environmental Reviewer does not receive a completed Compliance Determination in a timely manner from a Navajo department, the ER may conclude the ERP without that department's Determination, provided the ER documents the following conditions:

   i. The ER has made reasonable efforts to obtain the Compliance Determination from the Navajo department; and

   ii. The delay is not the fault of the Lessee.

§806 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 Nation's Business Site Leasing Regulations or the National Environmental Policy Act (NEPA), the Lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination in §807 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 Compliance Documents, the Lessee must obtain a compliance update or amendment from the Navajo department that has regulatory responsibility for the resource that has not been adequately evaluated.

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 provided the documents meet the requirements of this Subchapter.

§807 Determination That Lessee Has Completed Compliance Determination Process

a. Before the Environmental Reviewer may close the ERP, they must affirmatively find the following:

   i. The Lessee has fully complied with the requirements of §804 and §805;
ii. The Lessee has submitted all Compliance Determinations required by this Subchapter; and

iii. The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.

b. Upon making these findings, the ER will place in the Environmental Review Record a statement to the effect that Lessee has completed the Compliance Determination process.

§808 Compliance Determination Summary

a. After the Environmental Reviewer certifies that the Lessee has completed the Compliance Determination process, the ER will prepare a summary of the compliance findings. The summary will contain the following information:

i. The date of the Compliance Determination, and the identification of the source of the Compliance Determination if contained in an earlier environmental review;

ii. A summary of the government department's compliance determination for each law, including conditions of compliance, if any; and

iii. A copy of the Compliance Determination.

b. The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the Environmental Review Record.

§809 Public Notice Requirements:

a. The Environmental Reviewer may determine, if necessary, publish in a general circulation newspaper a notice of the Nation's intent to certify that a Lessee has completed the environmental review process of the Nation's business site leasing program.

b. The Notice must provide for a comment period, and state that public comments timely received will be considered before the Environmental Reviewer closes the ERP. The Notice will also provide information about the Environmental Review Record and tell the public how the Record may be reviewed.

§810 Environmental Review Record

a. An Environmental Review Record (ERR) must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the Environmental
Reviewer finds to be exempt pursuant to §802(a). The ERR must be maintained in a written format and be available for public review.

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

i. Determinations (in writing) made by ER pursuant to this Subchapter;

ii. Correspondence with Lessee and government agencies;

iii. Compliance Determinations including source documents and supporting documents;

iv. The Compliance Determination Summary;

v. Public notices, if applicable;

vi. Public comments, if applicable.

§811 Environmental Reviewer's Authorities and Duties

a. The Environmental Reviewer will maintain an Environmental Review Record (ERR) in which all documents relevant to the Environmental Review Process for a particular Leasing Decision will be kept.

b. The ER has the authority to carry out all the acts that are committed to their discretion in this Subpart.

c. The ER may act as Lessee's agent for the purposes of assisting the Lessee complete the requirements of this Subchapter.

§812 Environmental Reviewer's Closure Procedures

a. Upon determining the following, the ER will conclude the Environmental Review Process, whereupon the ER will transfer the Environmental Review Record to the Approving Entity:

i. The Environmental Review Record contains all documents required by §810;

ii. The public comment period has passed, if applicable;

iii. The review process under 2 N.N.C. § 164 is completed; and
iv. The Lessee has complied with all requirements of this Subchapter.

§813 Environmental Reviewer Required to Consult with Navajo Nation Departments

a. Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant Navajo Nation departments, and determine which department will be responsible for making the compliance finding referenced in §805 for each of the environmental laws referenced in §804.

b. The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The ER is required to consult with the relevant Navajo departments in the development and implementation of any such procedures.

Subchapter 900 Amendments; Severability

§901 Amendments

The Economic Development Committee of the Navajo Nation Council may amend these tribal regulations without the Secretary's approval, so long as the amendment is for clarification or administrative convenience, and is consistent with the *Navajo Nation Trust Land Leasing Act of 2000*.

§902 Severability

If the Navajo Nation's 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 stricken portion.

§903 Appeal of a Decision

If an interested party is adversely affected by a decision of the Navajo Nation, the interested party may appeal the decision consistent with these regulations to the Secretary.