

Band Assembly Bill 19-04-18-22

A Bill enacting the Helping Expedite and Advance Responsible Tribal Home Ownership Act, to be known as Leasing of Trust Lands, and numbered in the Mille Lacs Band Statutes as Chapter 7 of Title 21. The Leasing of Trust Lands Code will grant the Band the authority to negotiate and enter into Leases without further approvals by the U.S. Secretary of the Interior. Specifically, the Act authorizes the Band to execute Residential Leases, Agricultural Leases, Business Leases, Wind Energy and Evaluation Leases, and Wind and Solar Resource Leases of Band Trust Lands.

The District I Representative introduced the following Bill on the fifth day of January, 2022.

Preamble

Be it enacted by the Band Assembly of the Mille Lacs Band of Ojibwe for the purpose of enacting the Helping Expedite and Advance Responsible Tribal Home Ownership Act, to be known as Leasing of Trust Lands. The Leasing of Trust Lands Code will grant the Band the authority to negotiate and enter into Leases without further approvals by the U.S. Secretary of the Interior.

This Bill is intended to supersede and replace Ordinance 05-21.

CHAPTER 7

LEASING OF TRUST LANDS

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SUBCHAPTER 1

GENERAL

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§ 601. Findings.

The Band Assembly and Chief Executive of the Mille Lacs Band of Ojibwe, find that implementing the Helping Expedite and Advance Responsible Tribal Homeownership (“HEARTH”) Act, Pub. L. 112–151, 126 Stat. 1150, will promote self-determination of the Band and enhance economic and housing development on Band Lands.

§ 602. Purpose.

The purposes of this chapter are to:

- (a) Strengthen Band sovereignty and increase Band control over Band Lands and resources;
- (b) Provide an orderly process for the leasing of Band Lands;
- (c) Protect and preserve the Band’s assets from loss, damage, unlawful alienation, waste, and depletion; and
- (d) Provide for enforcement of all Leases that provide for the use of Band Lands.

§ 603. Authority.

The Band Assembly of the Mille Lacs Band of Ojibwe, enacts this chapter pursuant to its authority reserved under the 1837 Treaty of St. Peters, 1855 Treaty of Washington, and as recognized under section 16 of the Indian Reorganization Act, 25 U.S.C. § 476; under Mille Lacs Band statutes; and under §§ 102 and 302(a), (b) of the Minnesota Chippewa Tribe Land Ordinance #3.

§ 604. Amendment.

The Band Assembly and Chief Executive may amend this chapter, excluding substantive amendments that require approval by the Secretary of the Interior.

§ 605. Sovereign Immunity.

By adopting this chapter, the Band Assembly and Chief Executive do not waive the sovereign immunity of the Band or of any of its elected officials, appointees, or agents.

§ 606. Taxes.

Subject only to applicable federal law, no fee, tax, assessment, levy, or charge, including, but not limited to, business use, privilege, public utility, excise, or gross revenue taxes, imposed by a state or political subdivision shall apply to Permanent Improvements, regardless of ownership, activities under any Lease, or the Leasehold or possessory interest on Band Lands. The Band may impose its own taxes or other charges on the same pursuant to Band law.

§ 607. Effective Date.

This chapter shall take effect upon the approval by the U.S. Secretary of the Interior.

§ 608. Scope.

(a) This chapter governs:

- (1) Leases, Subleases, and Assignments of Band Lands, and amendments thereof, for any lawful business, agricultural, residential, religious, educational, and recreational purposes;
- (2) Wind Energy Evaluation Leases;
- (3) Wind and Solar Resource Leases; and
- (4) Mortgages of Leasehold interests involving Band Lands, and amendments thereof.

(b) The chapter does not govern:

- (1) Leases of any tract in which the United States holds title for the benefit of the Minnesota Chippewa Tribe;
- (2) Leases of lands held in Trust or Restricted Status for an individual Indian;
- (3) Lands held in fee;
- (4) Fractionated interests;

- (5) Mortgages of Band Lands;
- (6) Mineral Leases; or
- (7) Existing Leases which were processed with and approved by the BIA prior to the effective date of this chapter.

§ 609. Applicable Law.

This chapter, along with other Band laws, shall govern all Lease Documents and other matters arising under this chapter unless preempted by federal law. In the absence of applicable Band or federal law, the Court of Central Jurisdiction may apply common law principles consistent with Band culture and values in interpreting any Lease Document or other matter arising under this chapter. This chapter supersedes any inconsistent Commissioner Orders or other Band law regarding the leasing of Band Lands enacted prior to this chapter.

§ 610. Definitions.

For this chapter, the terms below are defined:

- (a) **“Agricultural Lease”** means a lease for farming, grazing, or both.
- (b) **“Assignment”** means an agreement between a Lessee and an assignee, whereby the assignee acquires all or some of the Lessee’s rights, and assumes all or some of the Lessee’s obligations, under a Lease.
- (c) **“Band”** means the Mille Lacs Band of Ojibwe, also known as the Non-Removable Mille Lacs Band of Ojibwe Indians.
- (d) **“Band Assembly”** means the duly elected Speaker of the Assembly and three District Representatives.
- (e) **“Band Entity”** means (i) the Band’s designated housing entity for purposes of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. §§ 4101-4243, (ii) a for-profit entity directly owned and controlled by the Band, (iii) a non-profit entity directly or indirectly controlled by the Band, or (iv) an entity formed for the purpose of developing, financing, and/or operating housing for public purposes. For purposes of this definition, “control” means appointment of board members, “directly” means by the Band government, and “indirectly” means by an entity that is ultimately owned and controlled by the Band government.
- (f) **“Band Lands”** means any tract in which the surface estate is owned by the Band in Trust or Restricted Status.

- (g) **“Band Member”** or **“Member”** means an enrolled member of the Mille Lacs Band of Ojibwe, also known as the Non-Removable Mille Lacs Band of Ojibwe Indians.
- (h) **“BIA”** means the Bureau of Indian Affairs, U.S. Department of the Interior.
- (i) **“Beneficiary Designation”** means a document signed by a residential Lessee, acknowledged by a notary and filed with the Real Estate Office that designates one individual to inherit the Lessee’s Leasehold upon the Lessee’s death. A Beneficiary Designation is valid only if the designee is a Band Member.
- (j) **“Best Interest of the Band”** means the interests of the Band’s current and future Members, including strengthening Band self-determination and sovereignty, preserving and promoting Band culture and traditions, safeguarding Band air, water, and other natural resources and developing the Band’s public and private sector economy, as determined by the Chief Executive and the Band Assembly.
- (k) **“Business Lease”** means a Lease for business and commercial purposes.
- (l) **“Chief Executive”** means the elected official who leads the Executive Branch of the Mille Lacs Band of Ojibwe pursuant to Band law.
- (m) **“Commissioner”** means the Band’s Commissioner of Natural Resources who leads the Department of Natural Resources pursuant to Band law. The Commissioner may delegate duties prescribed by this chapter to designated Department of Natural Resources personnel.
- (n) **“Court”** means the Court of Central Jurisdiction of the Mille Lacs Band of Ojibwe established pursuant to Band law.
- (o) **“Department of Natural Resources”** or **“Department”** means the Band’s Department of Natural Resources.
- (p) **“Eligible Residential Lessee”** means the Band, a Band Member, or a Band Entity.
- (q) **“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.
- (r) **“Housing Department”** means the entity established under Band law to manage the Band’s rental housing stock.
- (s) **“Land Lease Resolution”** means a formal document of the Band Assembly and Chief Executive, numbered consecutively by fiscal year, expressing approval, non-approval, or cancellation of either a Lease or Sublease applied for in accordance with

this chapter. Signatures of both the Speaker of the Assembly and the Chief Executive must be affixed to the Land Lease Resolution in order for it to be effective.

- (t) **“Lease”** means a written contract between the Band and a Lessee, whereby the Lessee is granted a right to possess Band Lands, for a specified purpose and duration. The Lessee’s right to possess will limit the Band’s right to possess the leased premises only to the extent provided in the Lease.
- (u) **“Lease Document”** means a Lease or an amendment, Assignment, Sublease, renewal, or Leasehold Mortgage arising under a Lease that does not require BIA approval under this chapter but needs to be filed with BIA and recorded with the LTRO.
- (v) **“Leasehold”** means the property interest conveyed by a Residential or Non-Residential Lease, as applicable, and includes all of the Permanent Improvements authorized under this chapter.
- (w) **“Leasehold Mortgage”** means 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 Leasehold Mortgagee.
- (x) **“Leasehold Mortgagee”** means any lender approved by the Band Assembly in writing, by memorandum of understanding, resolution, or express reference in a Lease Document, to make and hold a Leasehold Mortgage, and its successor and assigns.
- (y) **“Lessee”** means an individual or entity that has acquired a legal right to occupy Band Lands by Lease under this chapter. Except in cases where this chapter specifically addresses sublessees, the rights and obligations of Lessees extend to sublessees.
- (z) **“Lessor”** means the Mille Lacs Band of Ojibwe.
- (aa) **“Lineal Descendant”** means an individual’s descendants in a straight line including children, grandchildren, great-grandchildren, great-great-grandchildren, and so forth, in more remote degrees. Lineal Descendant includes adopted and non-marital individuals and their Lineal Descendants. Lineal descendancy determination for purposes of this chapter shall not affect any individual’s eligibility for Band membership.
- (bb) **“LTRO”** means the BIA Land Titles and Records Office.
- (cc) **“Non-Residential Lease”** means any Lease that is not a Residential Lease, including, but not limited to, a Lease for business, agricultural, religious, charitable, educational, or recreational purposes. A “Non-Residential Lease” may also include Wind and Solar Resource Leases and Wind Energy Evaluation Leases.

- (dd) **“Office of the Solicitor General”** means the attorney appointed under Band law and any deputy attorneys, attorneys contracted pursuant to Band law to assist in fulfilling the duties of the Office of the Solicitor General, or other personnel working under the Solicitor General’s supervision.
- (ee) **“Parent”** means an individual’s biological or legally adoptive mother or father, but does not include a stepparent, foster parent, grandparent, or biological parent whose parental rights have legally been terminated.
- (ff) **“Permanent Improvement”** refers to a permanent structure affixed to the land. A Permanent Improvement does not include mobile homes and other movable personal property.
- (gg) **“Principal Residence”** means the home that a Lessee occupies and maintains as a permanent place of abode. An individual may have only one Principal Residence at a time. An individual’s Principal Residence may not be affected by the Lessee’s temporary absence because of military service, education, temporary relocation for employment or health reasons, incarceration, or other similar reasons. A residence used primarily as a second home or vacation home may not be considered a Principal Residence.
- (hh) **“Public, for Purposes of Environmental Review”** means Band Members and other individuals or entities upon whom a Lease-related activity may have a particular and material environmental impact.
- (ii) **“Real Estate Office”** means the office within the Department of Natural Resources designated by the Commissioner to carry out the duties prescribed by this chapter, under the direction of the Real Estate Director.
- (jj) **“Real Estate Director”** means the individual hired by the Commissioner of Natural Resources to carry out the Real Estate Director duties prescribed by this chapter. The Real Estate Director may delegate duties prescribed by this chapter to Real Estate Office personnel. The Commissioner of Natural Resources is permitted to designate an alternate title for the Real Estate Director.
- (kk) **“Residential Lease”** means a Lease for single-family or multi-family housing purposes, including Leases of undeveloped and developed lands and the Permanent Improvements thereon. A Residential Lease may include related administrative and recreational areas that serve housing for public purposes.
- (ll) **“Secretary”** or **“Secretary of the Interior”** means the U.S. Secretary of the Interior, or an authorized representative.
- (mm) **“Significant Effect on the Environment”** means a material and demonstrable impact on the environment on or near Band Lands. Effects include (a) direct effects,

which are caused by the action and occur at the same time and place and (b) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the Department believes that the effect will be beneficial.

- (nn) **“Speaker of the Assembly”** means the elected official who leads the Legislative Branch of the Mille Lacs Band of Ojibwe pursuant to Band law.
- (oo) **“Spouse”** means an individual to whom one is legally married under Band or state law, including a traditional ceremony, as attested in writing by the Band spiritual leader who conducted the ceremony or, if the spiritual leader is unavailable, by other credible evidence.
- (pp) **“Sublease”** means a written agreement by which the Lessee grants to an individual or entity a right to possession no greater than that held by the Lessee under the Lease.
- (qq) **“Trespass”** means unauthorized entry, as defined in Band law.
- (rr) **“Trust Land”** or **“Restricted Land”** means any tract held in Trust Status or Restricted Status, respectively.
- (ss) **“Trust Status”** or **“Restricted Status”** or **“Trust or Restricted Status”** means that the United States holds title to the tract in trust for the benefit of the Band.
- (tt) **“Wind Energy Evaluation Lease”** or **“WEEL”** means a short-term Lease that authorizes possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation
- (uu) **“Wind and Solar Resource Lease”** or **“WSR”** means a Lease that authorizes possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity:
 - (1) for resale on a for-profit or non-profit basis;
 - (2) to a utility grid serving the public generally; or

- (3) to users within the local community (e.g., on and adjacent to a reservation).

SUBCHAPTER 2

ADMINISTRATION

Section

621. Band Assembly.

622. Commissioner of Natural Resources.

623. Real Estate Director.

624. Office of the Solicitor General.

§ 621. Band Assembly.

The Band Assembly shall ratify or reject Lease Documents within twenty-one (21) calendar days of receipt through the issuance of a Land Lease Resolution, which is herewith created. The Land Lease Resolution must be signed by both the Speaker of the Assembly and the Chief Executive.

§ 622. Commissioner of Natural Resources.

The Commissioner shall:

- (a) Adopt policies and procedures to administer the Band Lands leasing process, provided that such policies and procedures shall be administrative in nature and in compliance with this chapter;
- (b) Perform the environmental reviews and other environmental functions according to § 654; and
- (c) Hire the Real Estate Director.

§ 623. Real Estate Director.

The Real Estate Director shall:

- (a) Be responsible to process Lease applications and administer all Leases in accordance with this chapter;
- (b) Maintain an inventory of Band Lands and develop and maintain a land records system for the filing and recording of documents that affect Band land interests;

- (c) Provide leasing process information, Lease forms, and other Lease Documents to individuals and entities seeking to lease Band Lands;
- (d) Perform rental reviews and adjustments in accordance with this chapter;
- (e) Provide the BIA with copies of all Lease Documents, excluding approved residential subleases, according to § 657; and
- (f) Collect, record, and preserve any documentation of Lease payments that sufficiently allows the Secretary to abide by the trust responsibility of the United States in accordance with federal regulations; and
- (g) Be responsible to evaluate any leased premises, as needed, for:
 - (1) Suitability;
 - (2) Purchasing, installing, operating, and maintaining WSR equipment;
 - (3) Negotiating power purchase agreements; and
 - (4) Transmission.

§ 624. Office of the Solicitor General.

The Office of the Solicitor General shall perform the legal review of submitted Lease Documents and other legal functions required by this chapter.

SUBCHAPTER 3

LEASE REQUIREMENTS

Section

- 631. Legal Description.**
- 632. Purpose.**
- 633. Parties.**
- 634. Term.**
- 635. Permanent Improvements.**
- 636. Compensation.**
- 637. Due Diligence.**
- 638. Agricultural Leases.**
- 639. Bonding and Insurance.**

- 640. Mandatory Lease Terms.**
- 641. Lease Eligibility.**
- 642. Assignment of Leases.**
- 643. Mortgages of Leasehold Interests.**
- 644. Subleases.**
- 645. Abandoned Property.**

§ 631. Legal Description.

A Lease must describe the leased premises in a manner sufficient for recordation with the LTRO by any of the following:

- (a) A public or private survey;
- (b) A legal description;
- (c) A survey-grade global positioning system description; or
- (d) Other description prepared by a land surveyor licensed within the state of Minnesota that is sufficient to identify the leased premises.

§ 632. Purpose.

A Lease must state the purpose for which the land is to be leased and the authorized uses of the land.

§ 633. Parties.

- (a) Every Lease must state the legal names, Band Member enrollment numbers, if applicable, addresses, and email addresses, if any, of all parties to the Lease and the addresses, if different, to which notices must be directed. If the Lessee is a corporate entity, then the name and address of the agent for service of process must also be included.
- (b) A Residential Lease entered into in a representative capacity on behalf of a Band Member must contain the legal names and addresses of both the representative and the Member, as well as the Member's enrollment number.

§ 634. Term.

- (a) The Band Assembly and Chief Executive must determine the term for a residential, public, educational or recreational Lease by considering the Best Interest of the Band, the purposes for which the Lease is issued, and the Band's land use policies.
 - (1) The term must not exceed seventy-five (75) years.
- (b) The Band Assembly and Chief Executive must determine the term for an Agricultural Lease, Business Lease, Wind and Solar Resource Lease, or Wind Energy Evaluation Lease by considering the Best Interest of the Band, the purposes for which the Lease is issued, and the Band's land use policies.
 - (1) The term for an Agricultural Lease, Business Lease, or Wind and Solar Resource Lease must not exceed twenty-five (25) years, provided that such Lease may include an option to renew for up to two additional terms, each of which may not exceed twenty-five (25) years.
 - (2) The term for a Wind Energy Evaluation Lease may only be for an initial three (3)-year term, provided that such Lease may include an option to renew for up to one additional term which may not exceed three (3) years.
- (c) An option to renew must state:
 - (1) The time and manner in which the option must be exercised, or that the renewal is automatic;
 - (2) Whether Band Assembly and Chief Executive approval is required;
 - (3) The requirement that notice of renewal be provided to the Band, BIA, any sureties, and Leasehold Mortgagees; and
 - (4) The consideration, if any, for the exercise of the option.
- (d) Every Lease must state its effective date. No Lease shall be enforceable unless approved by the Band Assembly and Chief Executive through the issuance of a Land Lease Resolution.

§ 635. Permanent Improvements.

- (a) Each Lease must state:
 - (1) The type and location of each Permanent Improvement already existing on the leased site;

- (2) Whether the Lessee shall be permitted to make Permanent Improvements on the leased premises;
 - (3) Any limitations with respect to the nature and location of permissible Permanent Improvements;
 - (4) Who shall own Permanent Improvements during the Lease term;
 - (5) Who shall own the Permanent Improvements upon Lease term expiration; and
 - (6) The Lessee's obligations, which may include, but are not limited to, maintaining Permanent Improvements, removing Permanent Improvements, and restoring the leased premises to its pre-Lease condition.
- (b) In the absence of express Lease terms or other written agreement between the parties to the contrary, the following shall apply:
- (1) Any Permanent Improvement capable of being removed from a Leasehold must be considered the property of the Lessee upon Lease expiration.
 - (2) If the Lessee does not remove the Permanent Improvement within thirty (30) calendar days after the Lease expiration, the Permanent Improvement will become the property of the Band.
 - (3) The Band may take possession of the Permanent Improvement prior to thirty (30) calendar days if the Lessee waives this subsection's removal requirement.

§ 636. Compensation.

- (a) Each Lease must state:
- (1) The rent amount or other compensation due;
 - (2) When rent is due;
 - (3) Who receives rent;
 - (4) What payment type is acceptable;
 - (5) Whether, and by what percentage or amount, rent shall increase over the course of the Lease term; and
 - (6) The special fees and late charges that will be due if rent is late and any interest payments that may accrue.

- (b) The rent amount under a Non-Residential Lease, if any, must be based on Fair Annual Lease Value determined by competitive bidding, appraisal, or any other appropriate valuation method consistent with the Uniform Standards of Professional Appraisal Practice. The Band Assembly and Chief Executive may determine that the Best Interest of the Band justifies a lesser amount.
- (c) If leased premises are subject to fees, assessments, or taxes, the Lease must state which party is responsible for payment.
- (d) If rental reviews or adjustments are permitted, the Lease must state:
 - (1) How and when rental reviews or adjustments will be executed;
 - (2) When adjustments will become effective; and
 - (3) How disputes regarding adjustments will be resolved.

§ 637. Due Diligence.

- (a) **Residential Leases.** The Band may impose such due diligence requirements as may be necessary to protect the Best Interest of the Band.
- (b) **Non-Residential Leases.** If Permanent Improvements are to be constructed, the Lease may:
 - (1) Require that the Lessee start and complete the construction of Permanent Improvements within a schedule approved by the Band, subject to such modifications as may be mutually agreed upon in writing; or
 - (2) Require penalties for non-compliance with the construction schedule, unless such penalties are addressed in a separate agreement.
- (c) **Wind Energy Evaluation Lease.** A Wind Energy Evaluation Lease must specify the ownership of any energy resource information which the Lessee obtains during the Lease term. A Wind Energy Evaluation Lease must further require that the Lessee:
 - (1) Install testing and monitoring facilities within twelve (12) months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and
 - (2) If installation does not occur, or is not expected to be completed within the time period specified in subsection (c)(1), provide the Band with an explanation of good cause for any delay, the anticipated date of installation of

facilities, and evidence of progress toward installing or completing testing and monitoring facilities.

- (d) **Wind and Solar Resource.** A Wind and Solar Resource Lease must require that the Lessee:
- (1) Commence installation of energy facilities within two (2) years after the effective date of the Lease or consistent with a timeframe in the resource development plan;
 - (2) If installation does not occur, or is not expected to be completed within the time period specified in subsection (d)(1), provide the Band with an explanation of good cause as to the nature of the delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;
 - (3) Maintain all on-site electrical generation equipment, facilities, and related infrastructure in accordance with the design standards in the resource development plan; and
 - (4) Repair, place into service, or remove from the site within a time period specified in the WSR any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the WSR, unless the equipment or facilities were idle as a result of planned suspension of operations due to circumstances beyond the Lessee's control.

§ 638. Agricultural Leases.

- (a) If the tenant is a corporation, partnership, or other legal entity, it must provide to the Band its organizational documents and other documents which offer support that the tenant will be able to perform all of its lease obligations.
- (b) If a bond is required by § 639, the bond must be furnished before the Band will grant or approve the Lease.
- (c) The tenant must provide environmental and archaeological reports, surveys, and site assessments, as needed to document compliance with the National Environmental Policy Act and other applicable federal and tribal land use requirements.

§ 639. Bonding and Insurance.

- (a) Except as provided in § 639(f), Lessees must provide the Band with a performance bond or other form of security to secure:

- (1) At minimum, one year's Lease payment;
 - (2) The construction of Permanent Improvements required under the Lease, if applicable; and
 - (3) The restoration of the leased premises, if applicable.
- (b) The performance bond or other security instrument required by subsection (a) must require that the surety provide notice to the Band at least sixty (60) calendar days before cancellation of the performance bond or other security. Failure of the Lessee to provide a substitute performance bond or security is a violation of the Lease.
 - (c) A Lessee must obtain property insurance necessary to protect the interests of the Band and in amounts sufficient to protect all insurable Permanent Improvements on the premises.
 - (d) The insurance may include, but is not limited to, homeowners, property, hazard, liability, casualty, crop, or other insurance as specified in the Lease.
 - (e) The insurance must identify the Band and United States as additional insured parties.
 - (f) The Band may waive the bonding and insurance requirement of this section upon a finding by the Band Assembly and Chief Executive that such waiver is in the Best Interest of the Band.

§ 640. Mandatory Lease Terms.

- (a) All Leases must include the following provisions:
 - (1) The obligations of the Lessee and its sureties to the Band are also enforceable by the United States, so long as the land remains in Trust or Restricted Status;
 - (2) The Lessee may not engage in, or permit or suffer others to engage in, any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
 - (3) The Lessee must maintain the Leasehold in good condition and in compliance with all applicable laws;
 - (4) The Lessee must not interfere with adjoining owners' or Lessees' use of their property;
 - (5) The Lessee must comply with all Band and federal laws, ordinances, rules, and regulations, including this chapter and any other applicable laws;

- (6) If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee must provide notice to the Tribal Historical Preservation Office to determine how to proceed and appropriate disposition;
 - (7) The Band and the Secretary, upon her or his discretion, have the right, at any reasonable time during the term of the Lease and upon reasonable notice, to enter the leased premises for inspection and to ensure compliance;
 - (8) The Band and BIA may, at their discretion, treat as a Lease violation any failure by the Lessee to cooperate with a Band or BIA request to make appropriate records, reports, or information available to the Band or BIA for inspection and duplication;
 - (9) The Lessee holds the Band and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the leased premises;
 - (10) The Lessee indemnifies the Band and the United States against all liabilities or costs relating to use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge of any hazardous material from the leased premises that occurs during the Lease term, regardless of fault. The Lessee is not required to indemnify the Band for liability or cost arising from the Band's negligence or willful misconduct;
 - (11) The Lessee must maintain liability insurance and casualty insurance to cover full replacement value of Permanent Improvements and must name the Band as an additional insured, as its interest may appear;
 - (12) For any Permanent Improvements constructed on the premises, the Lessee must require appropriate bonds, or substitutes, from contractors, as approved by the Real Estate Director;
 - (13) The Lease is subject to the right of the Band to grant easements and rights of way for public purposes.
- (b) If the Lease is for residential purposes and the Lessee is an individual and not a Band Entity, then the Lessee must occupy the Leasehold as a Principal Residence, except that:
- (1) In the event the Leasehold is unimproved, construction of a residence must commence within twelve (12) months and be completed within twenty-four (24) months after Lease issuance. The Lessee must occupy the Leasehold

within thirty (30) calendar days after substantial completion of the residence, provided that the Band may, in its discretion, extend the relevant deadlines;

- (2) If an eligible Band Member acquires the Leasehold through gift, purchase, or inheritance, the Member must, within one (1) year, either (i) occupy the inherited Leasehold as a Principal Residence and apply for a new Lease, subject to Band approval, or (ii) transfer title to another Eligible Residential Lessee, subject to Band approval;
 - (3) An eligible Band Member may use the Leasehold seasonally if the Member's Principal Residence is outside of Band Lands.
- (c) If the Lease is for non-residential purposes and requires construction of Permanent Improvements, the Lease is subject to cancellation if such construction does not commence within twelve (12) months or is not completed within twenty-four (24) months after Lease issuance, provided that the Band may, in its discretion, extend the relevant deadlines.
 - (d) If the leased premises are within an irrigation or drainage project, except as provided by 25 C.F.R. § 171, the Lease must provide that the Lessee must pay all operation and maintenance charges that accrue during the Lease term to the appropriate office in charge of the irrigation project or drainage district.
 - (e) An Agricultural Lease must provide that the Lessee is required to manage the leased premises pursuant to any Band agricultural resource management plan and must incorporate appropriate stipulations or conservation plans into the Lease.

§ 641. Lease Eligibility.

(a) Residential Leases.

- (1) Only the Band, a Band Member, or Band Entity, or other entity authorized under this chapter may hold a Residential Lease. A custodial Parent, trustee, legal guardian, or receiver may hold a Residential Lease for the benefit of a Band Member.
- (2) A Residential Lease may be held by one or more individuals. Leases held by Spouses or by Parents and their children must be deemed to be held in joint tenancy with right of survivorship. Title held between anyone else must be deemed to be held as tenants in common unless the Residential Lease states that it is as a joint tenancy with right of survivorship.
- (3) Any Band Member occupying Band Lands with Band approval prior to the enactment of this chapter may continue to occupy under the individual's

existing occupancy right. The Band Member, however, must not have the rights of a Lessee under this chapter unless the individual obtains a new Lease under this chapter.

- (b) **Non-Residential Leases.** Any individual or entity may apply for a Non-Residential Lease.

§ 642. Assignment of Leases.

- (a) **Residential Leases.**

- (1) Except as otherwise expressly authorized in the Lease, a Lease may be assigned only as provided in this section.
- (2) A Residential Lease Assignment must:
 - (i) Be in writing;
 - (ii) State the effective date;
 - (iii) Include the assignee's agreement to assume all of the Lessee's obligations under the Lease;
 - (iv) Include the assignee's agreement to assume all of the Lessee's obligations under the note and mortgage, if any; and
 - (v) Be executed by the assignor and assignee.
- (3) A Lessee may assign the Leasehold interest as follows:
 - (i) By gift, sale, or Beneficiary Designation to one Eligible Residential Lessee;
 - (ii) By gift, sale, or Beneficiary Designation, to a non-Band Member Spouse or Lineal Descendant, as provided by § 644; or
 - (iii) In lieu of foreclosure, upon default, if permitted under Band laws governing mortgages, or to facilitate a mortgage assumption.
- (4) An Eligible Residential Lessee who takes an Assignment under this section is presumptively entitled to a new Lease in the Lessee's name.
- (5) An individual or entity that is not an Eligible Residential Lessee may not acquire a Residential Lease.

(b) Non-Residential Leases.

- (1) Unless otherwise expressly provided in the Lease, a Non-Residential Lease may only be assigned with Band approval pursuant to Subchapter 4.
- (2) An Assignment must:
 - (i) Be in writing;
 - (ii) State its effective date;
 - (iii) Include the assignee's agreement to assume all of the Lessee's obligations under the Lease; and
 - (iv) Be executed by the assignor and assignee.
- (c) Assignments must be submitted to the Real Estate Director for recording and, in the absence of a Lease provision permitting Assignments without approval, for approval by the Band pursuant to Subchapter 4. The Band must submit Assignments to the BIA for LTRO recording.

§ 643. Mortgages of Leasehold Interests.

- (a) A mortgage of a Leasehold interest must:
 - (1) Be in writing;
 - (2) State its effective date; and
 - (3) Be approved by the Band Assembly and Chief Executive, unless the Lease expressly authorizes a mortgage without Band approval.
- (b) Upon default, a Leasehold Mortgagee shall have rights established under Band law. Rights of redemption provided under Band law shall not apply to a non-residential mortgage.
- (c) All mortgages must be submitted to the Real Estate Director for recording and, if required, for approval by the Band pursuant to Subchapter 4. The Band must submit mortgages to the BIA for LTRO recording.

§ 644. Subleases.

- (a) A Sublease must:

- (1) Be in writing;
 - (2) State its effective date;
 - (3) Include the sublessee's agreement to assume all of the Lessee's obligations under the Lease;
 - (4) Be executed by the sublessor and the sublessee; and
 - (5) Be approved by the Band Assembly and Chief Executive by Land Lease Resolution unless the Lease expressly authorizes subleasing without Band approval.
- (b) All Subleases must be submitted to the Real Estate Director for recording and, if required, Band approval pursuant to Subchapter 4. The Band must submit Subleases to the BIA for LTRO recording.
 - (c) The Band's Housing Department may issue year-to-year rental Subleases to Band Members without the Band Assembly's or the Chief Executive's approval and may apply rent in accordance with Band law.

§ 645. Abandoned Property.

If personal property remains on a Leasehold after Lease termination or expiration and the owner cannot be located after thirty (30) calendar days' notice, the Band may sell or otherwise dispose of abandoned property upon obtaining appropriate judgment in the Court of Central Jurisdiction. The Band shall be entitled to reimbursement for any amounts expended in connection with its efforts to return the property to its owner, including, but not limited to, amounts spent on attorney fees and court costs. The Band shall also be entitled to recover costs for returning the real estate to its original condition in connection with Permanent Improvements made by a former Lessee to Band Lands.

SUBCHAPTER 4

PROCESS FOR LEASE APPROVAL

Section

651. Application.

652. Initial Real Estate Director Review.

653. Legal Review.

654. Environmental Review.

655. Final Real Estate Director Review.

656. Decision of the Band Assembly and the Chief Executive.

657. Real Estate Director's Post-Execution Duties.

658. Lease Amendments.

§ 651. Application.

(a) Residential.

- (1) A Residential Lease applicant must submit to the Real Estate Director a complete application, including the applicant's name, address, phone number, email address, date of birth, Band enrollment number if applicable, the names of individuals or entities that would occupy the Leasehold premises, and other information as the Real Estate Director may require.
- (2) When a Residential Lease expires, a residential Lessee who has made and maintained Leasehold Permanent Improvements, complied with all Lease terms and conditions, and all applicable Band laws must be presumptively entitled to receive a new Lease on the same property, subject to the Band's right to determine that the property should be put to a different use in the Best Interest of the Band.

(b) Non-Residential. A Non-Residential Lease applicant must submit to the Real Estate Director a complete application, including:

- (1) The applicant's name, address, phone number, email address, date of birth, Band enrollment number if applicable;
- (2) The purpose for which the Lease is sought; and
- (3) Documents necessary to complete the environmental review, including surveys, previous environmental assessments, development plans, construction plans, or other relevant documents or reports as requested by the Real Estate Director.

(c) If an application is incomplete, the Real Estate Director must advise the applicant of either or both the information and materials required to complete the application.

§ 652. Initial Real Estate Director Review.

The Real Estate Director must:

- (a) Obtain a title report from the BIA;

- (b) Determine whether to require a survey or, alternatively, to identify the leased premises with a legal description, survey-grade positioning system, or other description prepared by a land surveyor licensed within the state of Minnesota sufficient to describe the premises;
- (c) Draft a form of Lease or, in the case of a Non-Residential Lease proposed by the Lessee, review the form of Lease; and
- (d) Deliver a copy of the application packet to the Office of the Solicitor General for legal review pursuant to § 653.

§ 653. Legal Review.

The Office of the Solicitor General must review the Lease and provide the Real Estate Director and Commissioner of Natural Resources with a written attorney's statement within twenty-one (21) calendar days determining whether the Lease complies with this chapter and any recommendations, concerns, or both.

§ 654. Environmental Review.

- (a) All Leases are subject to environmental review.
- (b) The Commissioner, by and through the Department of Natural Resources, must complete an environmental review within sixty (60) calendar days of receipt of a Lease application. If a categorical exclusion applies, the Commissioner must complete an environmental review within thirty (30) calendar days of receipt of a Lease application.
- (c) **Environmental Assessment Worksheet.** Unless a categorical exclusion applies, the Commissioner must prepare an environmental assessment worksheet for each proposed Lease or proposed project that may create a Significant Effect on the Environment, including all construction and excavation.
- (d) **Draft Environmental Review.**
 - (1) An environmental assessment worksheet may be adopted as the environmental review if it contains, or is supplemented to contain, all required information.
 - (2) A draft environmental review requires:
 - (i) A statement of purpose of the Lease or proposed project;

- (ii) A description of the physical environment conditions in the vicinity of the Lease property;
 - (iii) A description of all Significant Effects on the Environment of the proposed project or Lease, including any unavoidable or irreversible effects if the Lease were approved;
 - (iv) Recommendations, if applicable, to mitigate any Significant Effects on the Environment or impose conditions on the proposed activities to mitigate environmental impacts;
 - (v) A determination on whether the proposed activity poses a significant impact;
 - (vi) If applicable, the reasons for a finding of no significant impact; and
 - (vii) Any mitigation measures or restoration and reclamation plan proposed, recommended, or required.
- (3) To determine whether an impact or effect constitutes a Significant Effect on the Environment the Commissioner must consider both local and broad impacts of the proposed activity and the intensity of that activity, including:
- (i) The potential impact on either or both public health and safety;
 - (ii) The potential impact on sacred or culturally significant sites;
 - (iii) The potential impact on sites used by Band Members for religious activities, hunting, fishing, gathering, or recreation;
 - (iv) The unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;
 - (v) Whether the proposed activities are related to other actions with individually insignificant but cumulatively significant impacts;
 - (vi) The potential impact on sites, structures, or objects listed in or eligible for listing in the National Register of Historic Places;
 - (vii) The potential loss or destruction of significant scientific, archaeological, cultural, or historical resources;
 - (viii) The potential impact on endangered or threatened species or its habitat that has been determined to be critical under Band law or federal law;

- (ix) Whether any action may violate Band or federal environmental laws;
 - (x) The potential impact on air quality;
 - (xi) The potential impact on water resources, including, but not limited to, surface and ground water, water quality, water quantity, water uses and rights, floodplains, and wetlands;
 - (xii) The potential impact on biological resources, including, but not limited to, wildlife, vegetation, ecosystems, and biological communities;
 - (xiii) The potential impact on visual resources, scenic views, and wilderness values;
 - (xiv) Potential generation of excessive noise, vibrations, light, glare, or other nuisances; and
 - (xv) Potential impact on transportation networks.
- (4) The Commissioner may adopt as a Band environmental review an environmental review prepared by another agency, entity, or individual pursuant to the National Environmental Policy Act provided that:
- (i) The Commissioner supplements such environmental review with an evaluation of impacts under Band environmental laws; and
 - (ii) The public comment and response requirements of this section are satisfied.

(e) **Categorical Exclusions.**

- (1) The Commissioner is authorized to exclude categories of projects from the environmental review requirement for Lease approval. If the Commissioner authorizes an exclusion, the Commissioner must subsequently propagate a Commissioner's Order pursuant to Band law.
- (2) Exceptions to Exclusions.
 - (i) Notwithstanding the categorical exclusions described in subsection (1), the Commissioner must perform an environmental review if there is a reason to believe that approval of the proposed Lease or project would adversely impact the interests addressed under § 654(d)(3).

- (ii) Notwithstanding the categorical exclusions described in subsection (1), the Chief Executive may, in his or her discretion, direct the Commissioner to prepare an environmental review.

(f) **Public Notice and Comment.**

- (1) Leases on Band Lands held in trust are subject to public notice and comment.
- (2) A notice of availability of the environmental review draft must be published and may include, but is not limited to:
 - (i) Posting the notice on the Band's website for fifteen (15) calendar days; and
 - (ii) Posting a hard copy at the Band's government offices and at other public locations for fifteen (15) calendar days.
- (3) The notice of availability must state that:
 - (i) A Lease is under consideration for approval;
 - (ii) A draft environmental review copy is available to any Member of the Public, for the Purposes of Environmental Review, requesting the copy without charge; and
 - (iii) Any Member of the Public, for the Purposes of Environmental Review, may, within fifteen (15) calendar days after publication notice, make comments, by email or letter, to the Commissioner regarding Significant Effects on the Environment that a proposed Lease may have.

(g) **Final Environmental Review.**

- (1) After the expiration of the comment period, the Commissioner must:
 - (i) Prepare a written response to all relevant and substantive public comments, and may address similar comments jointly;
 - (ii) Revise the draft environmental review as necessary based on public comment;
 - (iii) Prepare a final environmental review, which must include the response to comments;
 - (iv) Post the final environmental review on the Band's public website; and

- (v) Forward final environmental review copies to the Real Estate Director and Office of the Solicitor General.
- (2) The Commissioner may, but is not obligated to, make a recommendation on whether the potential adverse environmental impacts of the proposed Lease or project activities justify ratification or rejection of the application.
- (3) If no environmental review is required, the Commissioner must issue a report stating the reason that no environmental review statement is required and provide a recommendation on the Lease or project application.

§ 655. Final Real Estate Director Review.

- (a) After receipt of the final environmental review, the Real Estate Director must determine whether the applicant has satisfied all application requirements. If the Real Estate Director identifies application deficiencies, the Real Estate Director must advise the applicant and provide a reasonable period of time for the applicant to cure the deficiencies.
- (b) If the Real Estate Director determines that the application meets the requirements, the Real Estate Director, by and through the Commissioner of Natural Resources, must submit the application packet and the environmental review to the Band Assembly and Chief Executive for a final decision on whether to ratify or reject the Lease. The Real Estate Director, by and through the Commissioner of Natural Resources, may provide a recommendation to the Band Assembly and Chief Executive based on an evaluation of the Lease terms or the impact of the Lease on the Band's long-term land use policies and needs.
- (c) The application packet submitted to the Band Assembly and Chief Executive must include:
 - (1) The proposed Lease Documents and the Real Estate Director's recommendation on whether to approve the Lease, if any;
 - (2) The final environmental review, including any Commissioner recommendations;
 - (3) The legal review from the Office of the Solicitor General;
 - (4) Any documents requested by the Band Assembly and Chief Executive; and
 - (5) Any other relevant documents.

§ 656. Decision of Band Assembly and the Chief Executive.

- (a) The Band Assembly and the Chief Executive shall have the sole authority to ratify or reject the Lease application by issuance of a Land Lease Resolution.
- (b) Duplicate originals of an approved Lease must be executed by the Chief Executive, on behalf of the Band, and by the Lessee. The approval of the Band Assembly must be evidenced by the signature of the Speaker of the Assembly.
- (c) If the Band Assembly rejects a Lease application, a rejected party may request that the Band Assembly reconsider the Lease application. Within fifteen (15) calendar days of the request, the Band Assembly must approve or reject the Lease application, provided that the Band Assembly may, in its discretion, extend the relevant deadlines.
- (d) Final Lease approval, non-approval, or cancellation decisions may be appealed only to the Court of Central Jurisdiction.

§ 657. Real Estate Director's Post-Execution Duties.

Following the execution of an approved Lease, the Real Estate Director must:

- (a) Directly record, or provide to the BIA, approved Lease Documents, excluding approved residential Subleases, for BIA recording in the Trust Asset and Accounting Management System or any successor BIA land title maintenance and tracking system;
- (b) Provide duplicate original or certified copies of approved Lease Documents to the Lessee; and
- (c) Preserve original and digital copies of executed Lease Documents.

§ 658. Lease Amendments.

- (a) The Band Assembly and Chief Executive may approve or reject a proposed amendment to an approved Lease.
- (b) All amendments must be executed by each party to the Lease.
- (c) If there is a Leasehold Mortgage that provides that the mortgagee's consent or notification is required for an amendment, the Lessee must provide the Band with proof of such consent or notification prior to the amendment becoming effective.

SUBCHAPTER 5

ENFORCEMENT

Section

- 661. Jurisdiction.**
- 662. Remedies.**
- 663. Termination of Occupancy Right.**
- 664. Trespass.**
- 665. Band's Rights When Leasehold or Assignment is Subject to a Mortgage.**
- 666. BIA Enforcement.**
- 667. Appeals Process.**
- 668. Trust Responsibility.**
- 669. Severalty.**

§ 661. Jurisdiction.

The Mille Lacs Band of Ojibwe Court of Central Jurisdiction shall have exclusive jurisdiction over actions to enforce this chapter and actions involving interests created pursuant to this chapter.

§ 662. Remedies.

If a Lessee fails to cure a default within a prescribed time period under a Lease, the Real Estate Director may recommend that the Band Assembly and Chief Executive:

- (a) Cancel or terminate the Lease pursuant to this chapter by issuance of a Land Lease Resolution;
- (b) Grant an extension of time to cure the default;
- (c) Assess any damages resulting from the default, including interest and late payment penalties;
- (d) Pursue or negotiate other remedies, including, but not limited to, execution on bonds or collection of insurance proceeds; or
- (e) Order any combination of the remedies listed above.

§ 663. Termination of Occupancy Right.

- (a) The Lessor or sublessor may initiate court proceedings under Band law when a Lease violation occurs to terminate the occupancy right of the Lessee or sublessee.
- (b) If the Leasehold is subject to a mortgage, the plaintiff must provide notice of the violation to the Leasehold Mortgagee, which must have such rights to cure as may be provided in the mortgage and under the Band's mortgage lending laws.

§ 664. Trespass.

- (a) The Band, or other Lessor, may initiate court proceedings under applicable Band law when a Trespass occurs.
- (b) An individual or entity occupying Band Lands without authorization is subject to immediate removal and the Band shall have no liability for loss or damage to personal property.

§ 665. Band's Rights When Leasehold or Assignment is Subject to a Mortgage.

In the event the Leasehold or Assignment is subject to a lawful mortgage, then, except where the Band is the mortgagee, the Band may not terminate the Lease, but may:

- (a) With the Leasehold Mortgagee's consent, take an Assignment of the Lease and assume borrower's obligations under the note and mortgage; or
- (b) Regardless of the Leasehold Mortgagee's consent, pay off the outstanding balance on the loan secured by the mortgage before entry of judgment terminating the Lease.

§ 666. BIA Enforcement.

The BIA may, at its discretion and upon reasonable notice from the Band, enforce or cancel any Lease Document.

§ 667. Appeals Process.

An aggrieved applicant or tenant may appeal to the Court of Central Jurisdiction:

- (a) Any Lease decision by the Band Assembly or Chief Executive; or

- (b) Any material adverse findings by the Real Estate Director or Commissioner of Natural Resources, to include Lease violations and terminations.

§ 668. Trust Responsibility.

By adopting this chapter, the Band does not intend that the federal government be divested of its trust responsibility.

§ 669. Federal Recognition.

By adopting this chapter, the Band does not waive, or intend to waive in the future, full recognition by the United States of its separate, sovereign, and independent identity and status.

§ 670. Severalty.

If any provision under this chapter is held to be invalid or unenforceable for any lawful reason, then such provision shall not affect the legal validity of other provisions hereof.

Ordinance 18-22
(Band Assembly Bill 19-04-18-22)

Introduced to the Band Assembly on this
Fifth day of January in the year
Two thousand twenty-two.


Passed by the Band Assembly on this
Fifth day of January in the year
Two thousand twenty-two.

VETO

APPROVED

Date: January 10, 2022


Sheldon Boyd, Speaker of the Assembly


Melanie Benjamin, Chief Executive

OFFICIAL SEAL OF THE BAND



MILLE LACS BAND OF OJIBWE

Executive Branch of Tribal Government

January 10, 2021

Dear Honorable Members of the Band Assembly:

The Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (“HEARTH Act”) authorizes tribes to lease tribal lands held in trust by the United States for the benefit of tribes without the Secretary of the Interior’s approval if the Secretary has approved tribal leasing regulations that are consistent with the U.S. Bureau of Indian Affairs’ (“BIA”) regulations. After careful consideration, I veto Band Assembly Bill 19-04-18-22 pursuant to 4 MLBS § 6(l) for the reasons explained below.

Trust Responsibility

I am not willing to relieve the United States government of the trust responsibility it owes to the Mille Lacs Band in exchange for bypassing the requirement for the Secretary of the Interior to approve leases of lands held in trust for the benefit of the Band. The HEARTH Act provides that “[t]he United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations[.]”¹ If environmental harm were to occur, the Band would incur the costs of litigating the matter against the lessee.

Recognition of the Band as Sovereign Entity

I understand that the U.S. Bureau of Indian Affairs will not permit the Band to state that it is a federally-recognized tribe in this bill because it asserts, rather, that the Band is component reservation of the Minnesota Chippewa Tribe. If we agree to the BIA’s compromise language that the Band is merely the “Non-Removable Mille Lacs Band of Ojibwe Indians”², we would permit the BIA to preserve its incorrect assertion. It is our duty to protect and advance the Band’s sovereignty. I cannot, in good conscience, sign into law and submit to the BIA for approval legislation that preserves the BIA’s assertion that the Mille Lacs Band is not a federally-recognized tribe.

I am continuing discussions with Assistant Secretary – Indian Affairs Bryan Newland regarding the Band’s federal recognition status and will inform the Band Assembly when there is an update.

The Proposed Process Does Not Comply with Division of Powers

The Mille Lacs Band divided the Reservation Business Committee’s governmental powers to embrace the principle of the rule of law in order to become more responsive to the people’s needs. The rule of law is the principle that all persons and entities will be held accountable to the same laws, that those laws are publicly promulgated, that those persons and entities will be treated equally under the law, and that those laws are independently adjudicated. This principle minimizes arbitrary decision-making: decision-making that is discretionary and not grounded by established criteria.

The process established in this bill is inconsistent with this principle and leaves too much room for arbitrary decision-making by elected officials. The process directs that the Real Estate Director and the Office of the Solicitor General engage in a series of steps to approve lease applications. These steps include conducting environmental reviews, engaging in the public notice and comment process, and ensuring that the proposed lease is consistent with permissible lease purposes under the HEARTH Act and the requirements of this bill. However, the proposed process still permits the Joint Session of the Band

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Assembly discretion to deny a lease application without established criteria even if the application otherwise complies with the HEARTH Act's and this bill's permissible purposes and requirements.

The proposed process further establishes an appeal process for an applicant who receives an adverse decision. However, the appeal process does not permit independent judicial review of the Joint Session's action. Rather, it only permits the applicant to request the Joint Session to reconsider its decision. Overall, this process does not further the purpose of division of powers.

The Policy Risks are Greater than the Benefits

The BIA's claim that the HEARTH Act strengthens tribal sovereignty is hollow. By signing this bill into law, the Band would assume the risks that the United States currently bears under its trust responsibility to lands that the Band does not hold legal title to. Further, while the HEARTH Act seeks to expedite the approval process of residential leases by allowing tribes to bypass the Secretary's approval, adopting tribal leasing regulations would only shorten the approval process by 30 days.³

The risks associated with signing this bill into law simply outweigh the marginal benefits the HEARTH Act offers. It is not in the Band's interest as a beneficiary to assume the legal responsibilities of the United States as a trustee to property that it does not hold legal title to.

Miigwech,



Melanie Benjamin, Chief Executive

cc: Caleb Dogeagle, Solicitor General
Kelly Applegate, Commissioner of Natural Resources
Darcie Big Bear, Parliamentarian
