

KALISPEL RESOLUTION NO. 2011- 52

Kalispel Tribe of Indians
P.O. Box 39
Usk, WA 99180

(509) 445-1147
(509) 445-1705 *fax*
www.kalispeltribe.com



RESOLUTION

WHEREAS, the Kalispel Business Committee is the duly Constituted governing body of the Kalispel Tribe by the authority of the Constitution and By-Laws for the Kalispel Tribe; and

WHEREAS, under the Constitution and By-Laws of the Tribe, the Kalispel Business Committee is charged with the duty of protecting the health, security and general welfare of the Kalispel Tribe and all reservation residents; and

WHEREAS, the federal government has a responsibility for administering Tribal and allottee trust lands for the benefit of Indian people; and

WHEREAS, strict regulations administered by the Bureau of Indian Affairs (BIA) governing the leasing of trust lands has often hampered Tribal and individual initiatives to utilize their lands; and

WHEREAS, Congress has passed a law amending 25 USC 415 that allows the Kalispel Tribe to enter into leases of up to 75 years of Kalispel trust lands without the approval of the Bureau of Indian Affairs; and

WHEREAS, the amendment to 25 USC 415 requires the Tribe to adopt Tribal leasing regulations that must be approved by the Department of Interior; and


WHEREAS, Resolution No. 2011-25 adopted Tribal Regulations to implement a 75 year leasing ordinance that was reviewed by the Department of Interior who suggested removal of Section 3.4 to clarify the Ordinance.

NOW, THEREFORE BE IT RESOLVED that the Kalispel Tribe adopts the attached set of regulations that removes Section 3.4 of the 75 Year Leasing Ordinance adopted by the Tribe in Resolution 2011-25.


KALISPEL RESOLUTION NO. 2011-52

CERTIFICATION

The Kalispel Business Committee adopted the foregoing RESOLUTION at a meeting held on the 12 day of July, 2011, at the Tribal office on the Kalispel Indian Reservation near Usk, Washington, with the required quorum present by a vote of 3 FOR and 0 AGAINST.



GLEN NENEMA, CHAIRMAN
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2014)



DARREN HOLMES, SECRETARY
KALISPEL BUSINESS COMMITTEE
(TERM EXPIRES JUNE 2013)



KALISPEL TRIBAL COUNCIL
KALISPEL INDIAN RESERVATION
USK, WASHINGTON 99180

MEMORANDUM:

To: _____

FROM: _____

SUBJECT: 75 Year Leasing Ordinance

COUNCIL ACTION: 2011-52

The Kalispel Tribe adopts the attached set of regulations that removes Section 3.4 of the 75 Year Leasing Ordinance adopted by the Tribe in Resolution 2011-25.

MOTION: Darren Holmes

SECOND: Ray Pierre III

COUNCIL MEMBERS

**VOTE CAST
(YES) (NO)**

<u>Darren Holmes</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Betty Kingham</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Ray Pierre III</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

COUNCIL ACTIONS:

SIGNED: Elen Nixson

FOR: 3 **AGAINST:** 0

ABSTAINED: 0

FOR: 3

AGAINST: 0

DATE: 7-12-11

Kalispel Tribe of Indians Codes and Regulations

Ordinance

AN ORDINANCE ENACTING REGULATIONS PRESCRIBING PROCEDURES, TERMS AND CONDITIONS UNDER WHICH LEASES UP TO 75-YEARS OF TRIBAL LAND MAY BE GRANTED.

BE AND IT IS HEREBY ENACTED by the Business Committee of the Kalispel Tribe of Indians ("Business Committee") pursuant to authority vested in it by Article VI, Section 1 of its Constitution and Bylaws and 25 USC Section 415(b), that the following regulations prescribing procedures, terms and conditions under which certain leases of Tribal lands of the Kalispel Tribe of Indians ("Kalispel Tribe") may be granted are hereby adopted, to-wit:

SECTION I. EFFECTIVE DATE

These regulations shall be in full force and effect upon approval of the Secretary of the Interior or his duly authorized representative or designee ("Secretary").

SECTION II. SCOPE

These regulations shall authorize the Kalispel Tribe, an Indian Tribe reorganized pursuant to Section 16 of the Indian Reorganization Act of 1934, as amended, 25 USC Section 476; its corporations chartered under Section 17 thereof, 25 USC Section 477; or any subordinate organization or Kalispel governmental corporation chartered and duly empowered pursuant to the Law and Order Code of the Kalispel Tribe of Indians, Chapter 17, as amended under Kalispel Resolution No. 2008-02, and approved by the Secretary, to govern and control the leasing of all Tribal lands on the Kalispel Indian Reservation, either in trust, restricted or fee status, for the purpose of public or private, religious, educational, recreational, residential, commercial, industrial and business uses for a period of duration not exceeding seventy-five (75) years (including options to renew).

SECTION III. MANDATORY PROVISIONS

All leases under and pursuant to these regulations shall contain the following provisions in substantially the following form:

3.1 Nothing contained in this lease shall operate to delay or prevent a termination of Federal trust responsibilities with respect to the land by the issuance of a fee patent or otherwise during the term of the lease; however, such termination shall not serve to

abrogate the lease. In the event of such termination, all powers, duties or other functions of the Secretary of the Interior or authorized representative or designee shall terminate, and the responsibilities for enforcing compliance with the covenants of this lease including those of the Secretary shall be assumed by the lessor or successors in interest. The owners of the land and the lessee and its lease sureties shall be notified of any such change in the status of the land.

3.2 The lessee agrees that they will not use or cause to be used any part of the leased premises for any unlawful conduct or purpose.

3.3 Leases granted hereunder shall contain provisions that payments of rentals are to be made directly to the lessor.

SECTION IV. RENTAL REQUIREMENTS

No lease shall be granted at less than the present fair annual rental as determined by appraisal, or, in the alternative, at a present fair annual or periodic rental as the Business Committee deems appropriate under all the circumstances then present in regard to said lease; PROVIDED, HOWEVER, any lease made and executed under these regulations to an adult member of the Kalispel Tribe for homesite purposes on residential Tribal lands, or to a Kalispel Tribally chartered housing authority for Indian homesites, and/or any subordinate organization or Kalispel governmental corporation, may be granted for a nominal rental.

SECTION V. BONDS AND INSURANCE

Each lease granted for business, industrial or commercial uses or organization shall have the performance of the lessee's contractual provisions, in not less than an amount deemed reasonable and prudent by the Business Committee, secured by insurance, bond or other security or undertaking satisfactory to the Business Committee as well as require the lessee to provide insurance or other undertaking in an amount or manner adequate to protect all insurable improvements on the leased premises and to hold harmless and indemnify the lessor from any liability arising from lessee's use and occupancy of the leased premises; provided, that the requirements of this Section may be modified or waived by the Business Committee in the exercise of its business judgment.

SECTION VI. SPECIAL LIMITATIONS AND EXCEPTIONS

6.1 No lease shall provide the lessee with any option to renew which would result in the lessee obtaining a leasehold interest by the exercise of successive options for a term in the aggregate of more than seventy-five (75) years.

6.2 All leases made and executed pursuant to these regulations shall be for public or private religious, educational, residential, recreational, commercial, industrial or business purposes and uses, grazing purposes, and for those farming purposes which require the making of a

substantial investment in the improvement of the land for the production of specialized crops.

6.3 No lease shall be made and executed pursuant to these regulations for the exploitation of any natural resource without the approval of the Secretary.

6.4 No lease shall contain an option to purchase.

6.5 Each lease shall contain a covenant prohibiting a lessee or any number thereof from forming or annexing to a state municipal corporation or authority.

6.6 No lease or combination thereof shall work with a divestiture or diminishment of the Tribe's civil regulatory authority and control over said lands and occupants.

ARTICLE VII.
RENTAL ADJUSTMENT

7.1 Any lease granted hereunder shall, in the sole discretion of the Business Committee, provide for (1) a periodic rental adjustment for the purpose of allowing lessor to benefit from increases in the value of the leased premises; (2) a periodic rental adjustment for the purpose of maintaining the relative purchasing power of the rent contracted to be paid by the lessee to the lessor; (3) a rental based primarily on percentages of income produced from the leased premises; (4) a rental based primarily on percentages of income produced from or by sublessees; (5) a basic rental based upon a fair market rental return for the value of the land and improvements, if any, rented; (6) any combination of (5) above, and (1) through (4), inclusive.

7.2 In the event of a periodic rental adjustment pursuant to paragraph 7.1(1) and (5) above, such shall be made only after a determination of a present fair market rental at the time of the adjustment through appraisal conducted by not less than two (2) appraisers who shall be instructed in the consideration of such fair market rental to exclude improvements or developments accomplished by a lessee during the prior term of the lease or the contributive value of such improvements unless they are then the property of the lessor, and, further, in the instance of residential leases shall not be based upon a highest and best use different from that to which the leased premises are committed by the lease.

In the event of a rental adjustment for the purposes of Paragraph 7.1(2) such shall be made by reference and comparison to an appropriate and relevant cost of living index or portions and agreed to by the Business Committee.

SECTION VIII.
ASSIGNMENTS, SUBLEASES, AND ENCUMBRANCES

Leases may contain provisions authorizing the lessee or such one's successors in interest to sublease the premises, in whole or in part, assign the same, or encumber the leasehold interest for the purposes of borrowing capital for development or improvement or purchase and sale of the leased premises, including improvements. Such provisions may be with or without approval of the lessor but if without such approval, any sublease, assignment or encumbrance shall not serve to relieve or abrogate any sublessor, assignor or purchaser

upon foreclosure from any liability or obligation to perform the terms, conditions and covenants of the original lessee or perform the terms, conditions and covenants of the original or successor lessee under the lease, including that for payment of rent unless the lease expressly so provides. In the event of any sublease, assignment or encumbrance by lessee or such one's successor in interest of the leasehold interest, the lessor may require notification thereof together with a copy of the sublease, assignment or encumbrance. All leases containing suretyship provisions shall provide that any surety under any bond shall first consent in writing to any sublease, assignment, encumbrance or amendment of the lease before any of such shall be valid and binding upon the lessor. Notwithstanding the provisions of this Ordinance, any lease granted hereunder authorizing the encumbrance of the leasehold interest may contain such provisions necessary to conform to the eligibility requirements for leasehold secured lending as may be now or hereafter be promulgated by FNMA, FHLMC, FHA/HUD and/or VA in the discretion of the Business Committee.

SECTION IX.
OWNERSHIP OF IMPROVEMENTS

Improvements placed upon the leased premises shall become the property of the lessor upon the expiration of the lease unless specifically excepted therefrom under the provisions of the lease. In the event of such exception, the lease shall specify the maximum time allowed for removal of any improvements so excepted and require restoration of the premises by the lessee.

SECTION X.
LEASE FEES

The following fees may be charged by lessor to defray costs of lease administration and shall be collected from lessee in addition to legal expense and costs:

- a. Original lease set-up fee
\$ _____
- b. Upon assignment, sublease or
encumbrance
\$ _____
- c. Upon amendment, extension,
modification or other document
issued in connection with the
lease
\$ _____

The foregoing fees may be increased or decreased in such amounts as are deemed by the Business Committee appropriate to defray costs of administration of any lease or waived in the discretion of the Business Committee.

SECTION XI.
VIOLATION OF LEASE PROVISIONS – VENUE

11.1 if, in the opinion of the lessor, any term, condition or covenant of the lease has been breached by failure to perform, the lessee shall be notified of such claimed breach and given the time prescribed by the lease after transmittal or receipt of such notice in which to perform and cure the same if the breach is capable of cure. A copy of such notice shall be similarly transmitted to any surety on the bond. Failure to remedy the claimed breach may be cause to declare the lease terminated and canceled and lessor may thereafter proceed to avail itself of such remedies as provided by law and/or by the provisions of the lease. The lessee in all leases shall consent to jurisdiction and venue of any lease enforcement action brought by the lessor being laid in any court of competent jurisdiction. Provided, however, nothing herein shall prevent lease provisions providing for the mediation or arbitration of disputes.

11.2 Nothing herein contained shall be construed to deprive the Kalispel Tribe of the right, at its option, to request the United States to enforce any lease entered into under and pursuant to these regulations or to bring any action for breach of any such lease by a lessee in the federal courts, nor shall these regulations be construed as an expression of intention of the Congress of the United States and of the Kalispel Tribe of Indians to abrogate the trust responsibility of the United States over lands to be leased hereunder held by it in trust for the Kalispel Tribe, nor shall the adoption and implementation of these regulations be deemed to exclude the right of the Kalispel Tribe, should it deem fit to lease Tribal lands pursuant to other laws and regulations now enacted or hereafter amended, should such allow it to do so.

11.3 Nothing herein contained shall be construed or interpreted to have either waived the sovereign immunity of or be deemed a consent to be sued by the Kalispel Tribe, whether acting in its governmental or proprietary capacity; provided, however, total or partial waivers of sovereign immunity and/or consent to be sued may be contained in any lease entered under the authority of this Ordinance and Regulation.

SECTION XII.
COMPATIBILITY TO COMPREHENSIVE PLAN AND LAND USE/BUILDING CODES

No lease shall be granted unless the use to which the leased premises will be utilizing and improvements to be constructed are in conformance and compliance with the Comprehensive Land Use Plan of the lessor, its zoning and subdivision ordinances and its building and other applicable codes. In the event there exists no valid Tribal ordinance regulating the aforesaid subject matters, the otherwise appropriate and relevant ordinances and codes of the County of Pend Oreille and/or the County of Spokane, shall be applicable.

SECTION XIII.
ENVIRONMENTAL IMPACTS

No lease shall be made or executed pursuant hereto until the Business Committee has considered the environmental aspects thereof; considered the relationship of the use to neighboring lands; the height, quality and safety of any structures or other facilities to be constructed on the leased lands, including but not limited to the operational effects from

structures and facilities so erected and the availability of a judicial forum for all civil and criminal causes arising on the leased lands. Such review shall be conducted by the appropriate Tribal staff which shall report thereof to the Business Committee prior to their execution and signing of any lease made hereunder.

KALISPEL TRIBE OF INDIANS

By: _____
Glen Nenema,
Chairman, Business Committee

ATTEST:

By: _____
Darren Holmes, Secretary

APPROVED this ____ day of
_____, 2011.

SECRETARY OF THE INTERIOR OF
THE UNITED STATES

By: _____