***Editorial Note: Outline and other formatting will be corrected/standardized in the final draft.***

**ORDINANCE OF THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION**

AN ORDINANCE ESTABLISHING THE CONFEDERATED SALISH AND KOOTENAI TRIBES’ LANDS DEPARTMENT; RESCINDING ORDINANCE 45B; AND ESTABLISHING A CONSOLIDATED LAND ORDINANCE TO BE KNOWN AS ORDINANCE 45C. THE TRIBAL ADMINISTRATIVE PROCEDURES ORDINANCE, 86B, IS HEREBY EXCLUDED FROM ORDINANCE 45C.

**BE IT ENACTED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH**

**AND KOOTEANI TRIBES OF THE FLATHEAD NATION**, that this Ordinance be known as the “Confederated Salish and Kootenai Tribes’ Land Ordinance.”

1. **General Provisions and Administration**
   1. Declaration of Policy

The Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) formalized its relationship with the United States on July 16, 1855 by entering into the Hellgate Treaty. CSKT formally organized itself as a federally recognized Indian tribal government and established its Tribal Constitution on October 28, 1935. By the terms of the Treaty and the CSKT Constitution, CSKT has governance and sovereignty over CSKT trust lands within the Flathead Reservation and all reserved or CSKT fee lands. The purpose of the CSKT Land Ordinance is to serve as a guide and provide rules for the managing and governing of Tribally-owned lands within the Flathead Reservation and off Reservation lands that fall within Tribal jurisdiction. The Land Ordinance will provide a fair and equitable opportunity for use of lands by all Tribal members as well as safeguarding their health, safety and general welfare. The Land Ordinance provides for the conservation, protection and preservation of the land and resources, including cultural resources, for future generations.

The Land Ordinance provides the vehicle for reviewing, approving, formalizing and documenting land acquisition, disposal, exchange, leasing, permitting, subdivision, or changes in land use of Tribally-owned lands on the Flathead Indian Reservation.

It is the policy of the Tribal Council of the CSKT:

* + 1. Manage the Tribally-owned lands on and off the Flathead Reservation to the benefit of the members of the CSKT and, thereby, of all residents of the Flathead Reservation.
    2. Maintain a balance between the use and protection of lands on and off the Flathead Reservation.
    3. Direct and coordinate feasible technical and administrative expertise toward sound management and conservation of Tribally-owned land resources on and off the Flathead Reservation.
    4. Exercise governmental authorities for self-governance, compacted, and contractual obligations.
    5. Carry out Department activities and duties consistent with the Tribal Council’s priorities and funding.
  1. Authority

The Flathead Reservation Land Ordinance is written under the authority of Section 1 (a), (c), (d), (f), (g), (h), (i), (j), (m), (n), (p) and (u), Section 3, Article VI and Article VII of the Constitution and By-Law of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and the Code of Federal Regulations, including but not limited to, administrative action appeals; probate; land record and title; land acquisition; issuing appropriate documents and certificates; appropriate leasing and permitting, and appropriate examination for land uses.

Leases and permits and other acts governing the use of the land shall be executed by the Confederated Salish and Kootenai Tribal Council or its delegated representative and shall become effective upon approval of the Secretary of Interior or the Secretary’s delegated representative unless otherwise provided for in this Ordinance. The Tribal Council may, by resolution, delegate to the Secretary of the Tribal Council the authority to execute certain routine leases, permits or other administrative actions without referral to the Tribal Council.

It shall be the responsibility of the Department to enforce, or to cooperate with the Secretary of the Interior to enforce, provisions of this Ordinance.

Unless expressly waived in this Ordinance, the CSKT does not make any actual or implied waiver of the CSKT’s sovereign immunity.

* 1. Tribal Lands Department

This Ordinance establishes the Tribal Lands Department (Department) as an agency of the CSKT. The Department shall perform services that are specific to and focus exclusively upon the lands under Department jurisdiction.

The Department shall have those authorities and tools expressly described in this Ordinance. The Department shall further have those authorities and tools not described but necessary to reasonably accomplish its obligations.

Department core services as defined by the CSKT’ Self-governance Compact with the Bureau of Indian Affairs include, but are not limited to, billing, receipting and debt management; real property records management, including maintenance of the official Bureau of Indian Affairs trust title ownership, encumbrance and land records management system; probate processing; appraisal; trust to fee land conveyance, land acquisition and exchange, and land gift deed; cadastral and general boundary survey; rights of way; trust land lease/permit compliance enforcement to ensure contractual requirements are met including, but not limited to, noxious weed inventory and management and trust resource conservation; range and agriculture resource inventory, use planning and management; and minerals data management.

Department supplementary services include, but are not limited to, personnel management; budget development, accounting and management; reception desk; capital, non-capital and consumable property management; land consolidation and buy back; fee to trust conveyance; estate planning; mortgage review, regulatory administration, and recording; tribal fee land management and contractual compliance enforcement, , departmental and administrative planning and management; residential planning; and miscellaneous services including fencing and demolition.

* + 1. Department Head of the Tribal Lands Department

The principal executive officer of the Tribal Lands Department is its Department Head (Department Head), who shall be selected by a majority vote of the Tribal Council and shall serve at the pleasure of the Tribal Council. The Department Head shall receive as compensation a salary which is within the range established by the Tribal Council as appropriate for Department Heads, or which is agreed upon in negotiations between the Department Head and the Tribal Council. The Department Head shall be under the immediate supervision of the individual identified by the CSKT’s official Organizational Chart and shall have direct supervisory responsibility for managers and administrative staff supervisors within the Department and shall have indirect supervisory responsibility for all personnel employed within the Department.

* + 1. Duties of the Department

The Department is responsible for the administration and enforcement of this Ordinance, and for such additional functions and duties as have been or in the future are assigned by the Tribal Council to the Department. In addition to otherwise assigned functions and responsibilities, the Department shall:

* + - 1. Act as an official agency of the CSKT to implement and enforce all laws, ordinances, or policies adopted by the Tribal Council which pertain to the Department;
      2. Subject to Tribal Council direction and Federal approval as may be required by law, bear primary responsibility for development and coordination of policies, programs, and planning related to management, use, protection and record keeping of Tribal and individual-owned trust land resources and assets;
      3. Promote and develop programs and technical and financial resources for the sound management of land resources and assets on the Flathead Reservation;
      4. Keep accurate and complete records of all management, administrative, regulatory, financial, and quasi-judicial activities of the Department;
      5. Develop revenue projections and forecasting budgets that balance the obligations of the Department with compacted and related commitments and further balance available resources;
      6. Develop and maintain probate data collection reports identifying active and closed case numbers, case ages, and case backlog and distributions.
      7. Develop, maintain and implement a debt management policy for collecting delinquent monies owed to the CSKT;
      8. Establish and maintain an administrative fee schedule, adopted by the Tribal Council;
      9. Ensure that the Tribal Council is kept informed of all Department activities through regular reports by programs and by the Department itself;
      10. Prepare and submit to the Tribal Council an annual plan or forecast of the next succeeding fiscal year’s operations and budget;
      11. Develop, maintain, and implement a list that is approved by the Tribal Council that establishes the priority of categories of homesite lease applications;
      12. Develop and implement policies that shall be maintained by the department and approved by the Tribal Council that establish preferences for tribal member use of land and improvements;
      13. Take such actions as are necessary, proper and legal to further the policies set forth in Part I.) A.) of this Ordinance;
      14. Carry out appropriate self-governance, compacted and contractual obligations as part of the Tribal Government;
      15. Prioritize and carry out departmental activities and duties consistent with the Tribal Council’s directions and available funding.
      16. Preparation of soil and range inventories, farmland and rangeland management plans and monitoring programs to evaluate management plans;
      17. Management of agricultural lands and on-farm irrigation delivery system development and operation, and the application of state of the art, soil and range conservation management techniques to restore and ensure the productive potential of agricultural lands;
      18. Protection against agricultural pests, including development, implementation, and evaluation of integrated pest management programs to control noxious weeds, undesirable vegetation, and vertebrate or invertebrate agricultural pests;
      19. Administration and supervision of agricultural leasing and permitting activities, including determination of proper land use, carrying capacities, and proper stocking rates of livestock, appraisal, advertisement, negotiation, contract preparation, collecting, recording, and distributing rental receipts; and
      20. Technical assistance to individuals and the Tribes engaged in agricultural production or agribusiness.
    1. Powers of the Department

Subject to the concurrence of the Tribal Council, the Department is authorized to do the following tasks, subject to Council and Departmental priorities, available funds, and other limitations:

* + - 1. With such Federal and Tribal approval as may be required by law, negotiate leases, contracts, or such other arrangements as may be necessary to carry out the functions, powers, and duties of the Department;
      2. Review and appraise programs and activities within the Department in light of the policies set forth in Part I.) A.) of this Ordinance and applicable contracts and agreements, for the purpose of determining the extent to which the programs and activities are contributing to the achievements of those policies and to make recommendations to the Tribal Council in cases where programs or activities are not in alignment with those policies;
      3. Promulgate, revise, amend or repeal policies implementing the provisions of this Ordinance, subject to such Tribal and Federal approval as may be required by law;
      4. Issue and administer surface and subsurface permits, leases, variances, and other documents pertaining to land and resource management, subject to such Tribal and Federal approval as may be required by law;
      5. Provide services to the Tribal government and to eligible individuals for land acquisition, disposal, exchanges, partitionment, conveyance to trust, and conveyance from one beneficial owner to another; partition
      6. As available funding authorizes and permits, provide real property surface valuation services to the Tribal government, to individual trust landowners, and to such other persons or entities as necessary to carry out the functions, powers and duties of the Department;
      7. Enter into contracts for the acquisition, purchase, exchange, grant, or disposition of an interest in Tribal lands, including rights of way and easements, subject to such Tribal and Federal approval as may be required by law;
      8. Inspect trust lands subject to any contract, lease, rights of way, permit, or other agreement for compliance with this Ordinance and with the terms of the contact, lease, rights of way, permit,
      9. or other agreement or, in an appropriate case, with the terms of bond posted by the lessee, permittee, or holder of another interest in the lands guaranteeing performance of the terms of the relevant document;
      10. As warranted, issue a notice of non-compliance to, and pursue appropriate remedies from, a lessee, permittee, or holder of other interest in Tribal or Tribal managed lands; such notice, in accordance with applicable Tribal or Federal policies, shall specify corrective actions and/or penalties for unresolved issues;
      11. Investigate alleged trespass, provide notice of corrective action to the alleged trespasser or the possessor of trespass property, and, as appropriate, seize, impound, sell or dispose of unauthorized property involved in the trespass or the property may be held as evidence, and penalties, damages, and costs may be assessed, consistent with Federal and Tribal laws, rules and regulations;
      12. The Department shall maintain a list of standard interest rates, approved by Tribal Council or the Superintendent (as appropriate), that shall apply to delinquent balances owed the Department consistent with land status (individual trust land or Tribal land);
      13. Consult and cooperate with persons, organizations, and groups, public and private, concerned with the management of trust land of the Flathead Reservation;
      14. Appear and participate in proceedings before any Tribal, state, or Federal regulatory or other agency in matters involving or affecting the purposes of this Ordinance;
      15. Cooperate with municipal, state, Federal, or other agencies or officials to carry out the purposes of this Ordinance;
      16. Undertake studies, inquires, surveys, monitoring or analyses it may consider necessary or desirable for the accomplishment of the purposes of the Department; these activities may be carried out by the personnel of the Department or in cooperation with public or private agencies, including but not limited to educational, civic and research organizations, colleges, contractors, consultants, universities, institutes, trusts, and foundations;
      17. Seek and acquire outside funding sources to support planning, management, administrative, and regulatory activities of the Department, such sources may include, as appropriate, private organizations or foundations, state and Federal agencies;
      18. In consultation with appropriate Tribal personnel, establish and make decisions regarding Department priorities, methods, and operational practices;
      19. Review, approve, and submit for Tribal Council approval, all public dissemination of information concerning Department activities, including, but not limited to press releases, press conferences, interviews, scholarly or professional publications, and non-contractual correspondence with governmental or regulatory agencies;
      20. Review, approve, and submit for Tribal Council approval all annual budgets and work plans for programs within the Department;
      21. Review and authorize all travel to conduct Tribal business proposed by Department personnel for which program funds are to be expended;
      22. Review and authorize expenditure of funds by programs with the Department;
      23. Assign routine work or special projects to specific programs or to individuals within the Department;
      24. To resolve disputes between users of land under Departmental jurisdiction. Users of land who are in disputes that they cannot resolve to mutual satisfaction, or who have disputes with the Department, shall first consult with the Department to resolve the issue. When such resolution is not satisfactory, the issue may go before the Tribal Council for its resolution/direction;
      25. Represent Department programs before the Tribal Council at the request of programs involved, of the Tribal Council, or such representation deemed necessary or desirable by the Department;
      26. Require programs within the Department and consultants employed by the Department to inform the Department Head in advance of scheduled appearances before the Tribal Council and to disclose the nature of the business to be conducted with the Tribal Council;
      27. Ensure that Department personnel and contractors do not have conflicts of interest that could materially impact the Lands Department, CSKT, or Departmental or Tribal goals.
      28. Incorporate and administer such programs as the Tribal Council shall in the future designate as Department programs; and
      29. Establish, convene and direct inter- or intra-disciplinary working groups and task forces for the purpose of advancing land and resource protection/management/enhancement initiatives or recommendations to the Tribal Council.

1. **Definitions**
   1. For purposes of this Ordinance, the following terms and definitions shall apply. Words and phrases not specifically defined in the Ordinance shall be given their plain and ordinary meaning.
      1. Agricultural land means crop land, pasture land, rangeland and grazeable woodland, that is used for the production of agricultural products and/or occupied by industries that support the agricultural community. See Section II, Definitions, numbers 18, 22, and 43.
      2. Agricultural product means
         1. Crops grown under cultivated conditions whether used for personal consumption, subsistence, or sold for commercial benefit;
         2. Domestic livestock, including cattle, sheep, goats, horses, bison, swine, fowl, or other animals specifically raised and utilized for food or fiber or as beast of burden;
         3. Forage, hay, fodder, feed grains, crop residues and other items grown or harvested for the feeding and care of livestock, sold for commercial profit, or used for other purposes; and
         4. Other marketable or traditionally used materials authorized for removal from agricultural lands.
   2. Allocation means the apportionment of grazing privileges without competition to Tribal members or Tribally-authorized entities, including the Tribal designation of permittees and the number and kind of livestock to be grazed.
   3. Animal unit (AU) means a 1000-pound cow, with or without an unweaned calf, with such cow or cow/calf pair assumed to consume 26 pounds of dry forage matter per day.
   4. Animal unit month or AUM means a term used in a grazing area, calculated by multiplying the number of animal units by the number of months of grazing, to provide a useful measure of carrying capacity of a tract of grazing land. That makes an AUM equal to 31 days x 26 pounds or about 800 pounds of air-dried forage. The authorized use of forage for grazing is commonly expressed in animal unit months.
   5. Animal class means the age and/or sex group of a kind of animal. For example, cow, bull, calf, steer, heifer, yearling steer, yearling heifer, 2-year old heifer, etc.
   6. Barter shall mean an agreement by which parties exchange goods, commodities, or services for other goods, commodities, or services.
   7. Bond means an instrument that is cash, irrevocable letter of credit, non-revocable pledge of tribal dividend, or similar non-revocable, readily liquid asset that provides financial assurance that something promised by act or omission will be complied-with.
   8. Bureau or BIA means the Bureau of Indian Affairs of the Department of the Interior (unless otherwise identified).
   9. Carrying capacity means the maximum stocking rate possible without inducing permanent or long-term damage to vegetation or related resources. The rate may vary from year to year in the same area as a result of fluctuating forage production.
   10. Conservation easement means the grant of a property right or interest from the property owner to a unit of government or a nonprofit conservation organization stipulating that the described land, or other interest from the property, shall remain in perpetuity or a defined time period in its natural and open state, precluding future or additional development (with the exception of any allowable structures or facilities).
   11. CSKT or Tribes means the Confederated Salish and Kootenai Tribes of the Flathead Reservation.
   12. Department means the Tribal Lands Department of the Confederated Salish and Kootenai Tribes.
   13. Dwelling is defined as a stick framed building, mobile home, or other structure erected upon or affixed to the land and that meets the following criteria:
       1. Dwelling means a residence intended, and or utilized, for human habitation/occupancy, is attached or affixed to the ground in one spot, and includes but is not limited to the following structure types:
          1. Stick framed building,
          2. Modular or similar structure,
          3. “tiny home”,
          4. Modified shipping or other container,
          5. Repurposed structural materials, or
          6. Pre-fabricated dwelling.

Exceptions to this definition shall require advance (prior to lessee placement or construction) written approval by the Department.

* + 1. Requires compliance with, and is safe for human occupancy pursuant to applicable Ordinances, laws, and regulations.
    2. A person may declare a structure is or is not a dwelling on the Leased parcel, and the Lands Department will abide by this definition if the definition is reasonable in the given situation and is consistent with applicable Ordinances, laws and regulations.
  1. Easement means an interest in land owned by another that entitles its holder, who can be a person, governmental entity or other, to a specific limited use. An easement may also limit the landowner’s right of use of the land.
  2. Eligible person means an individual who is an adult Tribal member or, in the case of a homesites lease, an individual who is a non-Tribal member surviving spouse of the Tribal member homesites lessee and therefore is entitled to life estate in the homesites.
  3. Emergency situation means trespass on Indian land that can cause immediate damage to the property or resources and initiate emergency action by the Department in accordance with Section III (H) of this Ordinance and applicable sections of the Code of Federal Regulations.
  4. Farmland means agricultural land, excluding rangeland and grazeable woodland, that is used for production of food, feed, fiber, forage and seed oil crops, or other agricultural products, and may be either dryland or irrigated cropland or pasture. See Section II, Definitions, numbers 1, 22, and 43.
  5. Fee land means a parcel of Reservation land to which the title is not held by the United States in trust for the Tribes or for individual Indians and which is subject to the applicable law of conveyance, inheritance, and other disposition, and which is a property lawfully taxable by the state.
  6. Firepits means a contained fire barrier comprised of non-flammable materials capable of containing fire and restricting the spread of fire. Firepit does not include a vented, fully contained burning chamber fueled by propane, natural gas, or charcoal.
  7. Good standing means:
     1. No unresolved rental delinquency or other financial obligation related to a Department land use agreement
        1. An active, written payment agreement that is in compliance constitutes a resolved delinquency.
     2. No outstanding Departmental issues including noncompliance with the current agreements, trespass, and misuse of Tribal property or resources under lease or permit.
  8. Grazeable woodland means multiple use land which is managed predominantly for forest or forest product harvest and also has forage resources suitable for grazing use by domestic livestock. See Section II, Definitions, numbers 1, 18, and 43.
  9. Habitual Offender means any individual or entity utilizing Tribal lands for lease, permit, or easement who:
     1. Violate the same Ordinance provision or lease, permit, or easement provisions two times in one year; or
     2. Violate the same Ordinance provision or lease, permit, or easement provisions three times during three consecutive years; or
     3. Violate three different Ordinance or lease, permit, or easement provisions in one year;
     4. To have the Habitual Offender designation removed, the Lessee must remain free from violating any Ordinance or lease, permit, or easement provisions for two consecutive years.
     5. For purposes of this definition, a year is the 365-day period that starts with any respective violation that is identified in writing (a notice) to the Lessee by the Department.
     6. The Department may review designation as a habitual offender for extenuating circumstances which shall be reviewed and resolved at the Department’s sole discretion.
  10. Highly fractionated undivided land or fractionated ownership land means a parcel of land, part of which (either the surface or subsurface estate, or both) is held in trust by the United States for the benefit of many individual Indian owners in common, and where Federal laws, policies, and practices of Indian descent and distribution over the years since the Reservation was allotted has resulted in more than one owner.
  11. Highest and/or best bid means the parcel-specific combination of monetary and stewardship-related values, based on the parcel’s description and bid announcement and shall include, but not be limited to, values such as, monetary, land use, land management, Lessee’s committed improvements and other committed Lessee activities, and other stewardship of the parcel yielding the most benefit to the Tribes and resources.
  12. Homesites or a residential lease means a parcel of Tribal or individually-owned trust land to which a single lease has been granted by the Tribal Council or it’s designated representative to a Tribal member, for which a nominal rental may be paid to the Department or to the United States for the purpose of constructing and/or occupying a dwelling. A homesites and the dwelling thereon and a city or town house owned in trust by a Tribal member are eligible for services provided by the Salish and Kootenai Housing Authority. Tribal housing developments constructed and maintained by the Salish and Kootenai Housing Authority are not homesites. The Department does not consider it a violation for a Lessee himself or herself to conduct business activities on a homesite lease if those activities are not likely to degrade the leased premises, human health, or the environment and do not cause a nuisance to others.
  13. Immediate family member means an enrolled Tribal member and is limited to: a spouse, father, mother, son, daughter, brother, sister, grandmother, grandfather, grandson, or granddaughter. The definition of Immediate Family herein applies to this Ordinance only.
  14. Improvements means alterations made to the subject premises in order to customize it for the specific needs of a Lessee. These leasehold improvements normally include but are not limited to additions to or enhancements of raw land that increase its usefulness and value, and are to remain attached such as a home or residence, outbuildings, utilities, water systems, septic systems, roadways and landscaping. Improvements to the real property are generally developments of land or structures on the property that do more than merely replace, repair or restore the original condition. An improvement has to have a useful life of more than one year. The improvements are capitalized and amortized over the remaining life of the land use agreement or the life of the improvement, whichever is shorter. Unless otherwise provided, upon termination of the land use agreement, such improvements become the property of the landowner without any cost or obligation. Repairs, for example work done to maintain a home in good condition, are not improvements.
  15. Indian land means
      1. All lands held in trust by the United States for individual Indians or the Tribes, and
      2. Land for which the title is held in fee status by the Tribes.
  16. Individual trust land owner means a person who holds the status of Indian pursuant to relevant federal laws and rules and who holds an ownership interest in trust land within the Flathead Reservation.
  17. Integrated resource management plan means the plan developed pursuant to the process used by tribal governments to assess available resources and to provide identified holistic management objectives that include quality of life, production goals and landscape descriptions of all designated resources that may include (but not be limited to) water, fish, wildlife, forestry, agriculture, minerals, and recreation, as well as community and municipal resources, and may include any previously adopted Tribal codes and plans related to such resources.
  18. Lessee means the person or persons in whose name a lease appears on record in the offices of the Department, whether such person or persons be the original lessee or a subsequent assignee.
  19. Lessee(s) means all individuals or entities entering written or contractual lease agreements, excluding rights of way and conservation easements.
  20. Minerals means all materials excluding water, but including oil, gas, precious metals, aggregate, decorative stone, rip rap, and secondary minerals of economic value located below the surface of Reservation lands.
  21. Mobile home means a detached residential dwelling unit, which may consist of one or more sections, fabricated at a factory and designed to be towed on its own chassis to a building site for occupation as a dwelling with or without a permanent foundation. The term includes, but is not limited to, “trailers”, “trailer houses”, and “manufactured homes”. The term does not include “modular” or “factory-built buildings” that are fabricated at a factory in accordance with the Uniform Building Code Standards applicable to site-built homes, and are transported to the site for final assembly on a permanent foundation.
  22. Nuisance means one’s use of his or her real or personal or leased property in a way that is unreasonable, unwarranted, or illegal and that in some way injures or impairs the rights of others. If the nuisance is created by a guest on the property, the owner of the real or personal or leased property will be responsible for the nuisance.
  23. Open burn means a burn area uncontained by natural or manmade material to restrict the spread of fire.
  24. Pasture means grazing land composed of introduced, non-native forage and native grasses cultivated by humans and specifically used to produce forage to graze domestic livestock.
  25. Payment agreement means an agreement between a Lessee and the Department in which the Department agrees to accept installment payments to satisfy the full delinquent rental or other financial obligation amount, during a specific period (generally 12 months), in order to provide opportunity for the Lessee to avoid a land use agreement cancellation.
  26. Permittee(s) means all individuals or entities entering written or contractual permit agreements.
  27. Qualified bidder means a bidder that has no unresolved delinquency or other financial obligation(s) related to a lease, permit or other land use agreement, is in good standing if he or she has entered into and is complying with a payment agreement to pay delinquent rental, and has properly complied with all present land use agreement terms with no unresolved or outstanding noncompliance issues including trespass and misuse of Tribal property or resources under lease, permit or other land use agreement.
  28. Qualifying bid means a bid submitted from the present lessee or permittee within the specifications and timeframes of the advertisement, and a bid amount that is not less than 90 percent of the current rental. The Department will analyze each situation individually to determine if a justifiable reason exists when a bid does meet the 90 percent standard.
  29. Rangelands are lands on which the indigenous vegetation is predominately grasses, grass-like plants, forbs, and possibly shrubs or dispersed trees. Rangelands, generally, naturally produce forage plants suitable for grazing but where conditions are not adequate for growing crops, and include, but are not limited to, grasslands, shrublands, marshes and meadows. See Section II, Definitions, numbers 1, 18, and 22.
  30. Senior refers to someone who is at least sixty-two (62) years, is disabled pursuant to federal guidelines, or is a US military veteran who is at least fifty-five (55) years of age.
  31. Setback means the minimum distance by which any building or structure must be separated from a road, property or boundary line, easement or other identified physical, conceptual or biological object. Setback distances are measured on a horizontal plane from foundation walls, and all extensions of the structure including eaves, attached decks, and patios.
  32. Subleasing is the act of willfully allowing parties, other than the Lessee or Permittee, to use property as if it was leased or permitted to them.
  33. Superintendent shall mean the US Bureau of Indian Affairs Superintendent of the Flathead Agency at Pablo, Montana.
  34. Tag means a Department action or notice that provides notice to a Lessee and consists of a sticker, hanging notice, grease-pen lettering on a window or elsewhere, or other mechanism appropriate to identify a vehicle or structure as being subject to some form of Lease, Ordinance, or Policy compliance.
  35. Trespass means any unauthorized occupancy, use of, or action on Indian lands. See Section II, Definitions, numbers 1, 18, 22 and 43.
  36. Tribal Member, or member shall mean, unless otherwise specifically defined elsewhere in this Ordinance, an enrolled member of the Confederated and Salish and Kootenai Tribes.
  37. Tribally-controlled undivided interest means trust land in which greater than ½ of the ownership interests are held by CSKT.
  38. Tribally-owned land means CSKT trust or fee land and individual tribal member land within the exterior boundaries of the Flathead Reservation and off Reservation lands that fall within Tribal jurisdiction.
  39. Trust land means land within or outside of the Flathead Indian Reservation to which the title is held by the United States of America in trust for the benefit of the Tribes or individual Indians.
  40. Utilities means Water, Sewer, and Electricity utilized by all members of a community, for common use.
  41. Unlawful Conduct is any action(s) that violates CSKT Ordinance or other law, rule, or regulation applicable to CSKT lands management or violates the legal rights of co-lessees, neighbors, or other people. Violations must be adjudicated or otherwise resolved in the appropriate/applicable legal process or must be admitted to by the lessee (in any forum or mode). Simply being charged with something or a simple accusation of violation is not sufficient grounds for a violation.
  42. Waste means overt and willful acts of destruction, or the failure to prevent destruction where such prevention is reasonable and prudent, that lead to the drop-in value of a piece of property by harming the property or depleting natural resources available on the property.

1. **General Process**
   1. Conservation

Stipulations of the lease, permit, right of way or other land use agreement will require each lessee, permittee or other user of land to protect the land and permanent improvements thereon leased, permitted or otherwise given to Lessee’s or grantee’s care, from erosion, depredation, or accelerated depreciation while such land and improvements are under Lessee’s or grantee’s care.

All mineral and sub-surface interests of lands owned by the Tribes are reserved by the Tribes’ and no rights therein shall pass to a lessee, permittee or other user of these lands by virtue of leases or permits made under this Ordinance except leases or permits made in accordance with Title 25 of the Code of Federal Regulations, or other Federal law, for leasing of trust lands for mineral development, and surface exploration, mining and reclamation of lands.

* 1. Occupancy or Use

Any person or entity occupying or using Tribal land shall have a valid lease, permit, or right of way. Said lease, permit, or right of way shall be maintained on file with the Lands Department and shall be provided to the Agency Superintendent’s Office as required by applicable law or regulation. Failure to have such a lease, or permit properly filed shall be grounds for evictions, damages, forfeiture of improvements and land rights, revocation, and other remedies available by law.

c. No Burial

No entity or individual may engage in the internment or any disposition of human remains on the surface or below the surface of CSKT controlled lands or waters, whether or not such party holds a Tribal land use agreement, except on lands expressly designated for burial by the Tribal Council. For purposes of this section, human remains refers to and includes whole or partial human bodies, ashes from cremation or other products of treatment of human remains, or funerary objects related to or part of a human body.

Violation of this provision shall be construed as and treated by the Department as trespass.

d. Indian Preference

It is the policy of the Tribal Council to encourage the use of Tribal owned lands by Tribal members. For example, it is also recognized that the agricultural resource will support a limited number of economically sound farm and ranch enterprises. As the number of requests begins to equal or surpass the resource capacity, it becomes necessary to set priorities for Indian preference. Wherever Indian preference is granted on lands in this Ordinance, it shall mean preference to enrolled adult members of the CSKT.

e. Voluntary Cancellation and Assignment

Tribal lands leased or permitted by Tribal members, whether or not by using preference granted them to meet high bids, negotiations or allocations, and by non-Tribal members may be cancelled upon written request of the Lessee under the following conditions. Prior to Tribal Council consideration of a request, the Department will evaluate all cancellation requests using the standards below and provide a recommendation(s) to the Tribal Council which shall have sole discretion to approve, not approve, modify, or take no action on the request.

Cancellation by request of the Lessee

The Lessee seeking cancellation of any Agreement with the Department must be in good standing and shall be responsible for the terms of the existing Agreement until such time that an acceptable replacement lease agreement has been approved in writing by the Department and is executed and in effect.

The Department will conduct compliance inspections, as appropriate and based on available Department resources, and the results will be used to determine compliance with the existing Agreement.

Lands coming under a cancellation by request before the first contract anniversary date will be offered to the competing Tribal member bidders for

The current lease or permit beginning with the next highest bidder and continuing to the lowest minimum bidder until cancelled lease or permit is accepted. The canceling Lessee and replacement Lessee must be in good standing. If no bidder accepts the offer then the lands impacted by cancellation will be advertised to find a replacement Lessee.

The replacement Lessee will be bound by all terms and requirements of the contract including 100% of the current rental amount.

The replacement Lessee will be afforded preference to meet high bids or negotiations for the subsequent lease or permit.

If all competing bidders decline the cancelled lease or permit, the land will be advertised. The cancellation by request will not be affected until the Department successfully leases, or issues a permit, on the parcel and in accordance with the requirements in this Ordinance.

If advertised for invitation to bid, the agricultural lease will be included in the earliest semi-annual bid advertisement along with other available agricultural leases.

Agricultural Lease Assignment by request of the Lessee

All requests must be submitted in writing to the Department. Prior to Tribal Council consideration of a request, the Department will evaluate all assignment requests using the standards below and provide a recommendation(s) to the Tribal Council which shall have sole discretion to approve, not approve, modify, or take no action on the request.

The Department will use the criteria and considerations in the Code of Federal Regulations pertaining to the assignment of Indian leases and permits to guide its recommendation to the Tribal Council.

Assignment requests will be considered on a case by case basis.

The assignee and assignor must be in good standing.

A pre-assignment compliance inspection will be conducted by the Department and the results will be provided to the Tribal Council and the assignor and potential assignee.

The assignee must agree to be bound by all terms and requirements of the lease or permit including 100% of the current rental amount.

Assignment may only be done before the first contract anniversary date. Assignment requests after the first contract anniversary date will be considered to be a cancellation by request and the process described above will be implemented.

Only assignment requests from Tribal member Lessees will be considered. An assignment request from a non-Tribal member Lessee will be considered to be a cancellation by request and the process described above will be implemented.

The assignee will be afforded preference to meet high bids or negotiations for the subsequent lease or permit.

Assignments of Tribal land may only be to an enrolled Tribal member using the following guides:

Competing Tribal member bidders for the current lease/permit will be offered opportunity for the assignment beginning with the next highest bidder and continuing to the lowest minimum bidder until the assignment is accepted.

Except, if the assignment is to an eligible immediate family member who is an adult, and

If all competing bidders for the current lease or permit decline the assignment and the assignment is not awarded to an eligible immediate family member, the assignment request will be considered to be a cancellation by request and the procedure for cancellation by request described above will be implemented.

1. Valuation
   1. Unless required by federal regulation or Tribal policy, the Department shall have the discretion to complete an appraisal in all instances where lands are to be leased or permitted or easements to be granted. The appraisal shall then become a base from which negotiations on rentals, damages, and land use can proceed except as otherwise provided in the Ordinance. When an appraisal is used to determine fair annual rental, the appraisal must be prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).
2. Bidding Procedures

The Department shall apply the following rules to bidders and bids:

* 1. A qualified bidder;
     1. Has no unresolved delinquency or other financial obligations(s) related to a lease, permit or other land use agreement;
     2. A lessee or permittee is considered to be in good standing if he or she has entered into and is in compliance with a payment agreement;
     3. Has properly complied with all present land use agreement terms with no unresolved or outstanding noncompliance issues including trespass and misuse of Tribal property or resources under lease or permit;
  2. A qualifying bid from the present lessee or permittee means;
     1. A bid submitted within the specification and timeframes of the advertisement, and a bid amount that is not less than 90 percent of the current rental.
     2. The Department will analyze each situation individually to determine if a justifiable reason exists when a bid does not meet this standard.

The Department will evaluate all bids, modifications, and other land use proposals using these standards and provide a recommendation to the Tribal Council to award, not award, or negotiate an agreement.

1. Trespass

The Department shall:

* 1. Respond to alleged trespass in a prompt, efficient manner.
  2. Investigate accidental, willful, and/and or incidental trespass on Indian land and resources.
  3. Assess trespass penalties for the value of products used or removed, collect for damages to Indian land and resources, and collect the costs incurred as a consequence of enforcement consistent with the provisions for trespass on Indian lands in the Code of Federal Regulations.
  4. Ensure that damaged Indian land and resources resulting from trespass is rehabilitated and stabilized at the expense of the trespasser.

The Department shall perform enforcement of trespass on Indian lands according to applicable provisions of the Code of Federal Regulations which include, but may not be limited to, notification of trespass and required corrective action, authority to impound and sell unauthorized livestock or other property, and assessment and collection of penalties, damages and costs, including expenses incurred gathering, impounding, caring for and disposing of trespass property.

The CSKT or any Tribal or Federal employee or agent/contractor shall not be liable for the loss of any trespassing livestock by reason of death or injury of such trespassing livestock while in possession of the Tribes or any Tribal or Federal employee or agent/contractor of the Tribes.

If a trespass causes an emergency situation to health, safety, or threatens significant injury to property, then the Department is authorized to take reasonable actions to respond to that trespass without complying with the above provisions. After the emergency situation has abated then the Department must notify the Lessee and other relevant parties of its actions and must resume normal trespass responses and processes as described above.

1. Eviction
   1. An individual subject to Department land use agreement or other occupier of land subject to Departmental authority shall be subject to eviction if such person occupies real property under any of the following situations:
   2. Default. If a Lessee or Permittee remains on the Indian Land after the date to vacate in a thirty-day notice:
      1. That occupier is in default in the payment of rent, and that he/she shall pay the rent or surrender possession of the property; or
      2. The Lessee or Permittee enters into a land use agreement on a month to month, or other specified term, to come into compliance and fails to meet the requirements in the land use agreement. In which case, the agreement shall terminate within the specific time period and Lessee or Permittee shall surrender possession of the property.
   3. Holdover Tenancy:
      1. After the expiration of the term of any Departmental land use Agreement;
      2. If such person has entered into or remains on the Indian land of the CSKT without the permission and without having any claim under a written agreement or title to such property;
      3. The Department has terminated a person’s tenancy pursuant to applicable CSKT ordinance and the individual(s) has not vacated the land/premises; or
      4. The Department is not required to give notice of a holdover tenancy eviction.
   4. Waste and Nuisance. After having received fourteen-day notice:
      1. When such person shall continue to fail to keep or perform any condition or covenant of any land use agreement under which the property is held after he or she has been given notice to comply with such condition or covenant or else to surrender the property; or
      2. When such person continues to commit Waste or Nuisance upon the occupied property after having been given notice to either cease such Waste or Nuisance or to surrender the property; or
      3. When such person has received a Departmental notice to vacate the premises because there is substantial evidence that the occupier has engaged in prohibited or criminal activity which immanently threatens health, safety, or the right to peaceable enjoyment of neighboring properties; provided that a conviction shall not be required in such instances.
   5. Emergency and Public Safety. After having received seven days’ notice: when such person violates a material covenant of any Lessee or agreement designed to protect the health and safety of persons. However, in situations where there is an emergency, such as a fire or conditions making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to health and safety, the notice may be made in a period of time that is reasonable under the circumstances.
   6. Eviction Process
      1. The Department shall submit a written notice containing the following information:
         1. Name(s) of the individual(s) or entity;
         2. A factual statement summarizing the grounds for eviction, and;
         3. A description of the property so it can be identified with reasonable certainty.
         4. A copy of the following documents:
            1. Rental or other land use Agreement;
            2. All notices sent to and/or served on the Lessee;
            3. A description of pertinent oral or non-written communications with the Lessee, and;
            4. Any claims for damages or compensation due from the person to be evicted.
   7. If the Lessee does not agree with the Department’s conclusions, the Lessee may file an Administrative Appeal with the Department head. The Department head shall have thirty days to compile information and review the Department’s actions. The Department head shall directly issue a written Decision of Administrative Appeal, which shall identify his/her conclusions on the matter.
   8. If the Department Head determines that more than thirty days is required to investigate and resolve the matter then he/she may issue a notice for up to thirty additional days to process the Administrative Appeal.
   9. If the Lessee is not satisfied with the Department Head’s Decision of Administrative Appeal then the Lessee can only appeal the decision to Tribal Court on Tribal fees lands or on Indian lands that do not require Superintendent authority. Any appeal prior to the Department Head’s final Decision of Administrative Appeal shall be considered premature and void.
   10. If the above process does not resolve the matter then the Department, in its sole discretion, may file a complaint with the Tribal Court alleging the information as contained in Section III (I) (6), Eviction Process, of this Ordinance.
   11. A summons, issued as in other Tribal Court proceedings, requiring the defendants to appear for a trial upon the complaint on a date and time specified in the summons. The summons must notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless within fifteen (15) days they file with the court an answer and appear for trial at the time, date and place specified in the summons.
   12. Notices required or authorized in this Chapter shall be given in writing by either:
       1. Delivering a copy personally to the Lessee or to any person at least 18 years old lawfully residing on the premises; or
       2. By posting the notice in a secure and conspicuous place near the entrance to the premises and by sending an additional copy to the Lessee by certified mail, return receipt requested, properly addressed, postage prepaid.
   13. If the above methods are unsuccessful, then notice may be served by any other method reasonably designed to give actual notice to the Lessee. Proof of service shall be made by affidavit of appropriate Department staff, stating that he or she has complied fully with requirements of this section.
2. Improvements
   1. A Lessee may make improvements that are reasonable and appropriate to the land use and location and are directly related to conservation of the land or necessary for proper utilization of it and clearly identified in a written Agreement with the Department.
   2. All written Agreements shall comply with applicable Code of Federal Regulations requirements and shall ensure that improvements are maintained by the Lessee and that ownership and costs associated with improvements are specified.
      1. All improvements must be approved in writing by the Department prior to construction or development/implementation of the improvement.
      2. Improvements approved by the Department after the Original Lease Agreement has been executed shall be signed by all parties as an addendum to the Original Lease Agreement or as a newly reformed/revised agreement.
   3. All written Agreements must:
      1. Describe the type and location of all improvements to be constructed by the Lessee;
      2. Specify what improvements shall become appurtenant to the land and/or otherwise become part of the land and what improvements shall remain the property of the Lessee upon the proper expiration of the Lease;
      3. Specify the time period during which the Lessee shall, at the Lessee’s expense, be required to remove the improvements and restore the land disturbed by the improvements to as close as possible to its condition prior to construction of improvements.
   4. Venue and Jurisdiction
      1. The proper court venue for all Department land transactions disputes shall be the CSKT Tribal Court, unless otherwise governed by applicable law.
3. **Leases**
   1. General Provisions
      1. All leases covering the use of Tribal lands, including lands in which the Tribes have a majority interest, shall be made in accordance with the Constitution and By-Laws of the CSKT, the regulations contained in the Code of Federal Regulations, Title 25, and the provisions of this Ordinance.
      2. Survivorship
         1. Survivorship in Homesite Leases, Range Leases, and Agricultural Leases established prior to the date of this section’s adoption shall be managed according to the Ordinance requirements effective at the time of the Lease’s execution or the Lease’s modification.
         2. If the land agreement contains specific terms for survivorship or the Lessee executed a Survivorship Form then those agreement terms shall apply. If the land agreement does not contain applicable terms, then the Department’s policy shall apply.
         3. Survivorship forms executed pursuant to Lands Ordinance 45(b) and prior to the adoption of Lands Ordinance 45(c) shall remain in full effect until the earliest of:
            1. The Lessee withdraws or revokes the form;
            2. the Lease is renewed, at which time the then-exiting form shall be revoked as a function of renewal;
            3. Expiration of the lease;
            4. Lease termination, for any valid cause;
            5. An action by a court of competent jurisdiction, to which the Department has proper notice.
         4. Homesite Leases
            1. Homesite leases established after the date of this Section’s adoption shall have survivorship as follows: Where a Lessee dies then the surviving spouse of the Lessee shall have the option to be granted a life estate with the option for the surviving spouse to assume the Lessee’s Lease.
            2. Any Life Estate shall be according to the terms of the decedent’s Lease Terms, as amended by applicable act of law, ordinance, or renewal/modification.
      3. The Department will seek to effectuate any survivorship form that was submitted to the Department prior to December 31, 2021. Forms submitted after that date will not be valid or considered. Lessees may contact the Department for referrals for estate planning assistance.
         * 1. Agricultural Leases and Range Leases shall continue for the remaining duration on the existing lease terms. The Department will act as necessary to preserve the property subject to the lease until it can be disposed of or re-leased to another party. The Department is under no obligation to take action to preserve the value of the property subject to the lease and Department stewardship until it can be disposed of or re-leased to another party.
      4. When a majority owner(s) contracts-out for use a parcel such that the rental received is less than fair annual rental or the best achievable rent, as determined by appraisal, competitive bidding, or other valuation method consistent with federal regulations, the majority owner(s) must compensate minority owner(s) at a proportional rate, based on the percentage of ownership, so the minority owner receives at least the best achievable rent. Majority ownership is defined as owning more than one-half of the total fiscal value of a lands parcel.
      5. All written agreements and related land use authorizations must be submitted by the Department for recordation to the Tribal Land Title and Records office within 5 business days of receipt of approval/execution by the Secretary of Interior or his/her designee.
      6. When a lease is cancelled for cause, all payments and financial sureties are forfeited to the Tribes.
         1. In case of a Homesite lease cancellation due to a lease violation, all permanent improvements that are not disposed-of pursuant to the Lessee’s lease shall transfer to the CSKT. To the extent practicable and as resources permit, the Department shall secure the improvements and said improvements shall transfer to the new Lessee when the land is next leased.
         2. The Department shall attempt to re-lease the land. If advertised for invitation to bid, agriculture lease land will be included in the earliest semi-annual advertisement and other lease land will be advertised for invitation to bid at the first reasonable opportunity based on Department duties and obligations.
            1. Past due and future rental payments for the remainder of the lease term and any other obligations relating to the lease may be collected until the Lessee resolves all obligations to the Tribes associated with the Lease and the Department is able to re-lease the land.
            2. When a new contract has been executed by another Lessee and approved by the Tribal Chairperson, or authorized delegate, the obligations of the canceling Lessee terminate, excluding any debts or payments due.
            3. If the Department is only able to reasonably lease the land for an amount which is less than the terms of the original (broken) Lease, then the Lessee shall owe the Department the difference between what the Lessee originally agreed-to and what the Department was able to re-lease the land for.
         3. The Department does not consider it a violation for a Lessee himself or herself to conduct business activities on a homesite lease if those activities are not likely to degrade the leased premises, human health, or the environment and do not cause a nuisance to others.
         4. By allowing, or restricting, or otherwise regulating activities on homesite leases the Department is not overtly or impliedly approving or endorsing any specific activities on a homesite. Lessees are and remain fully responsible for the activities on their Leased land. Lessees must follow all applicable laws and regulations relating to human health, the environment, worker safety, etc.
         5. The Department reserves the right to reject any or all lease and permit applications or requests submitted to the Department, withdraw any tracts during the leasing or permitting process, or waive any informality or technical defect on the lease or permit, to protect human health and welfare and Tribal resources and interests, subject to approval of the Tribal Council.
   2. Business and Commercial Leases
      * 1. Land designated in the Land Use Plan as commercial, industrial, or recreational may be leased for business or commercial purposes upon submission of an acceptable proposal to lease or by competitive bid whichever appears to be most advantageous to the Tribes. Short-term interim leases or permits may be negotiated pending development to higher and better use.
        2. Negotiations and advertisements will be approved by the Tribal Land Committee on all properties. Awards will be made by the Tribal Council. Such leases will be for a term of less than one year up to not more than 25 years and may include provisions to renew for up to one additional term of up to 25 years in conformance with applicable federal regulations.
        3. All business and commercial leases shall include a time phase program for construction showing completion dates. Building plans showing the specifications and locations shall be approved by the Tribal Council and the Secretary of Interior or their delegated representatives before construction is started.
        4. All permanent improvements placed on business and commercial leases shall be of a nature that will lend themselves to the surrounding country and their design shall be approved by the Tribal Council and the Secretary of Interior or their delegated representatives. All improvements existing or placed on the land shall be maintained by the lessee in good repair and shall become the property of the Tribes at the termination of the lease unless otherwise specified in the lease.
        5. No timber removal or other alterations of the land involved in the business or commercial lease shall be made without prior approval of the Tribal Council and the Secretary of Interior or their delegated representatives.
        6. The lessee shall be responsible for any damage caused to the land and improvements covered by his/her lease or to lands adjacent to it through willful or negligent action or inaction. Provisions of the lease shall hold the Tribes free from any liability for personal or property damage occurring on the leased premises. Lessees shall procure and maintain for the duration of the lease insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the Lessee’s operation or use of the leased premises. The cost of such insurance shall be borne by the Lessee. The CSKT and the United States shall be named as co-insured.
   3. Homesites Leases
      1. Homesite leases shall be granted first priority in designated townsites or homesite tracts. Second priority may be given to individual requests in non-designated areas.
      2. For any homesite lease request in a non-designated area, the Department shall be required to purse preliminary Tribal Council consent for consideration prior to any detailed Departmental lease evaluation. This request must be made exclusively through and by the Department to the Tribal Council. This Tribal Council consent is for consideration only and seeks to efficiently manage Departmental and other costs and does not create approval for a lease nor vest any right in any entity.
      3. Prior to Tribal Council consideration of a non-designated area homesite lease request, the Department will evaluate the request based on the results of a NEPA analysis or other determinations and provide a recommendation(s) to the Tribal Council which shall have sole discretion to approve, not approve, modify or take no action on the request.
      4. The Tribes will not pay or be obligated to pay for costs associated with use of homesite properties, including but not limited to, power, water, sewer, road construction or maintenance, fencing, or any other costs that may arise for a homesite in a non-designated or designated area, unless those items and costs are expressly included in the lease.
      5. Homesite leases shall be made for the express and sole purposes as described in the definition of a Homesite as written in this Ordinance.
      6. Recreational leases shall not be considered or issued by the Department. Pre- existing recreational leases shall remain in effect according to the terms of those leases until they expire or are otherwise appropriately terminated.
      7. Homesite leases shall be limited to maximum size of 2½ acres unless it can be demonstrated by the lessee that additional land is needed to contain the habitation and supporting facilities for the family including an area sufficient for the production of garden products for family use. For an exception to occur the proponent of the exception must submit a written request to the Land Committee and Tribal Council. The Tribal Council may, upon proof of need for additional land, increase the size of the homesite lease to fully or partially meet the lessee’s request providing such increase is feasible and in no way infringes upon the rights of adjacent existing lessees or rights of way.
      8. The application for a homesite lease shall be made in person by the prospective lessee. The applications will be considered on a Priority Status Criteria, as approved by Tribal Council, that will provide a prioritization mechanism to ensure that categories of needs are given priority status for homesite lease opportunities. The Department will maintain and update, as needed, the application Priority Status Criteria.
      9. Lease Term.
         1. Leases awarded by the Tribal Council or its authorized representative on lands for a Tribal homesite may be for the following periods of time:
         2. A 15-month lease initially to allow the lessee the approved time to develop and be living upon the site (in the absence of leasehold mortgage) as the Lessee’s primary residence, as defined by applicable US Internal Revenue Service code. The Department may, in its sole discretion, approve a Lessee’s written request to adjust this 15-month period. A 25-year term with an option to renew the lease, with approval of the Tribal Council, for an additional 25 year-period or a term not to exceed fifty (50) years.
      10. Rental Rates and Adjustments.
          1. Rental rates and adjustment for homesite leases to Tribal members will be set by Tribal Resolution at the sole discretion of the Tribal Council.
          2. Lessee shall be responsible to fence the boundary of his or her lease according to lease agreement terms and as necessary to prevent trespass or otherwise protect real or personal property and improvements. All homesite lease lots that are located adjacent to an agriculture lease or a range unit must be fenced prior to placing improvements upon the lot.
          3. The lessee shall be responsible to ensure at lessee-expense that all permanent improvements on the land shall be maintained in good repair.
          4. Keeping livestock on homesite leases is prohibited unless expressly approved and provided for in the lease agreement and the homesite is greater than 2 ½ acres.
          5. The lessee shall be responsible for any damage to the leased premises and for damage to outside lands or people through Lessee’s negligence or misuse of the land or improvements thereon.
          6. A home site Lessee may place improvements on or to the land which are reasonably necessary and appropriate for the conservation and/or utilization of that land and associated structures such as outbuildings and utilities with the written approval of the Department, which shall be acquired in advance of making any improvements. Only one single-family dwelling will be permitted on each home site lease, and the Lessee is responsible to ensure all such installations and improvements meet all applicable laws, regulations, rules, and codes.
          7. All buildings and improvements to be placed on leased land under a homesite agreement will revert to the Tribes if the lessee conveys improvements to anyone other than an immediate family member(s). This person(s) must be otherwise eligible to hold homesite lease and is further limited to heirs, devisees, or successors.
          8. Homesite Lessees may request that the Lands Department seek Council approval for the Lessee to convey improvements to an enrolled CSKT Tribal Member.
          9. Lessees shall not sublease a homesite lease, or any portion thereof.
          10. Proposed Site and Building Standards
              1. All Tribal or lessee actions on lands subject to a homesite lease agreement must comply with the Tribal guidance document, “Site and Building Standards for Tribal Homesites”, which the Department shall maintain and update as appropriate, (Programmatic Environmental Assessment for homesite leasing and development on the Flathead Reservation, October 2000, Appendix D1 through D6).
          11. Fire
              1. Fires on homesites are only allowed in appropriate ‘firepits’ as defined in this Ordinance.
              2. Compliance with these provisions are the minimum requirements and Lessees are responsible for containing and controlling fires related to firepit use, maintenance and operations, and burning on their lands.
              3. Lessees are solely responsible for all burning activities on leased lands and Lessees may be liable for costs, damages, and injuries caused by burning activities on and off their lands leased from CSKT

When situating firepits, Lessees are responsible to consider, at a minimum, setbacks from structures, site boundaries, and other potential hazard-related features, such as ensuring safe fire-buffers and considering, for example, tall grasses, shrubs, overhead obstacles, or other potentially flammable objects.

Lessee is responsible to always consider basic fire safety, which is the Lessee’s ongoing responsibility. This includes but not limited to weather, not leaving a fire unattended, putting out a fire when not continuously attended, etc. See, e.g. CSKT Division of Fire Control or US Forest Service guidelines, following posted restrictions (red flag, etc.), burning seasons for open burning, and other applicable guidance and law.

* + - * 1. Lessee is responsible to ensure that fires do not to create a nuisance, as defined in this ordinance, such as by creating fire hazards, burning garbage, plastics, or hazardous or toxic materials or materials that release hazardous or toxic substances when burned.
        2. Operations of firepits and burning activities on Lands Leased from the CSKT are entirely in the purview of the Lessee. Lands Department enforcement or firepit inspection does not indicate that the firepit can be used in all conditions and situations/times.
        3. Cultural uses of fire, such as drymeat racks, tanning hides, and sweat lodges, are not specially regulated and Lessees are responsible for the above fire provisions.
      1. Open Burning on homesites is prohibited unless expressly approved and provided for in the lease agreement, the homesite is greater than 1.0 acre, and does not conflict with any applicable CSKT, federal, state, or local laws. Open burning only can be performed during the designated burning seasons.
      2. It shall be the responsibility of the lessee to keep all utilities on the homesites in operation and maintenance, all charges are to be kept current. Failure to keep utilities current shall be a lease violation causing the lease to be subject to cancellation.
  1. Agriculture Farming and Grazing Leases
     1. Lease Valuation Fair annual rental must be consistent with federal regulations and may be determined by appraisal, competitive bidding, or other valuation method that determines representative value. When an appraisal is used to determine fair annual rental, the appraisal must be prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).
        1. This amount shall be considered by the Department during negotiations to determine rental valuations and lease agreements.
     2. Agriculture leases must provide for payment of rental at the beginning of the lease term and at subsequent periodic intervals as described in the agreement. Lease payments shall be based on factors including, but not limited to.
        1. Fixed amounts;
        2. Defined variable amounts;
        3. A share of products generated by the lease or percentage of income derived from the sale of products generated by the lease,
        4. A combination of factors.
     3. Agriculture lease rentals are due:
        1. March 1 for Tribal members leasing Tribal land that is 100% owned by the Tribes, Tribal fee, or Tribal trust;
        2. January 1 for Tribal members leasing individually owned trust land;
        3. January 1 for non-Tribal members on any leased land.
     4. At the discretion of the Tribes, multiple Tribally owned agricultural land parcels and agreements may be unitized in accordance with applicable federal regulations where it is more convenient or practical than individual management, and when it is also practicable and in the best interest of the landowners. The fair annual rental from a unitized agricultural lease will be distributed based on the fiscal value of each landowner’s proportional interest in the entire unit.
        1. At least semi-annually, normally during the spring and fall, agriculture land not under lease or where a lease is due to expire within the next twelve (12) months will be advertised for invitation to lease. The Department may post special advertisements at its discretion and as appropriate. Prior to publication the invitation to lease must be approved by the Superintendent for individually owned trust lands and by the Tribal Council for 100% Tribally owned lands and lands to which the Tribes are the majority owner.
        2. The highest and/or best bid submitted by a qualified bidder will be awarded a five year lease except that a Tribal member who is the most recent prior lessee and has satisfactorily complied with all terms of the previous lease will have the first option of meeting the high bid and being awarded the lease, provided he/she (the Tribal member who is the most recent prior lessee) has entered a qualifying bid on the particular tract.

Second priority of meeting the high bid of a non-Tribal member will be extended to the Tribal members who are not the most-recent prior satisfactory lessee.

Third priority of meeting the high bid of a non-Tribal member will be extended to the non-Tribal member who was the most-recent prior satisfactory lessee.

In the event that more than one Tribal member of the second priority submits a qualifying bid, the member submitting the highest and/or best bid will be offered the first opportunity to meet a high bid of a non-member. The Tribal Council or their authorized representative will determine what constitutes the best bid as submitted by the bidders.

* + - * 1. To qualify for the above option of meeting high bid, the term “lessee” shall apply only to agriculture leases duly entered into and shall not include permits, revocable permits, licenses, or other indicia of a qualified right to occupy the land at issue.
        2. To exercise the above option of meeting the high bid the successful prior lessee must respond in writing to the Department within ten days of issuance of the Department’s notification.
      1. Unless otherwise stated by the Department, only sealed bids will be accepted. Where sealed bids are used, and there is a tie for the high-bid, then the tied bidders shall have the opportunity to submit a new bid, which shall not be lower than the original bid, and which bid opening shall be held no later than 15 days from the original bid opening at a date specified by the Department. If only one of the tied bidders submits a new bid then the bidder’s original bid shall become the high bid. If none of the tied bidders submits a new bid then the Department shall submit the original-tied bids to the Tribal Council for determination of the best bid, which shall be selected and awarded.
         1. The invitation to lease Tribal-owned land during the spring advertisement shall be reserved for Tribal members only.

Lands not successfully leased in the spring advertisement process shall be advertised for lease in the fall advertisement process and shall thereby be available to all bidders.

* + - * 1. If the sealed-bid process does not yield a consummated lease, unless it occurs 30 or less calendar days from a scheduled advertisement, then the Department shall be authorized to pursue a lease through a non-bid process. In these situations, the Department shall:
        2. Prioritize other bids that were not the highest bid, in the descending order of bid price, and then outside offers, whether solicited by the Department or otherwise tendered;
        3. Negotiate after having been advertised and no suitable bid was received;
        4. Negotiate if the tract is isolated and the adjacent landowner is willing to execute a proper lease;
        5. Ensure that a negotiated lease is not less than 10% of the fair annual rental unless the Tribal Council, the BIA, or the individual trust landowner(s) determines that acceptance of a lesser amount is in the best interest of the landowner(s).
        6. Not negotiate a lease if the regularly scheduled advertising period is scheduled to occur 30 or less calendar days from receipt of the negotiated offer.
      1. The standard lease term shall be five-years.
         1. The Tribal Council shall have authority to use a longer or shorter lease term if it determines that such period is in the best interest of the Tribes.

Such lease must be in accord with Code of Federal Regulations, one or more rental adjustments must be provided if the lease term is more than five years, unless this rental adjustment is expressly provided for in the Agreement.

* + - 1. Improvement lease
         1. Where the Tribes seek specific improvements to agricultural lands and/or natural resources, an Improvement Lease may be negotiated. The Improvement Lease may provide for a longer lease term in which increased Lessee benefit will compensate Lessee for Lessee’s cost of construction, installation or development of such improvements. The Tribes shall own the improvements at the termination of the Improvement Lease.
         2. The Improvement Lease shall specify what improvements will be done by Lessee; the schedule for improvement construction, installation, development and/or implementation; estimated or actual costs; improvement plans with “as built” drawings and/or descriptions as an Agreement addendum on completion of construction, installation, development and/or implementation; agreement length and rental amount; bonding; and penalty for non-compliance.
         3. These improvements shall reasonably seek to economically increase production and land value and/or prevent or reduce imminent loss or damage to land and/or resources.
         4. An improvement lease shall not be permitted to satisfy existing land use agreement obligations.

The terms of an improvement lease must be reasonable and consistent with purposes of the lease and the level of investment required.

The typical maximum improvement lease term shall be up to 10 years.

A term longer than ten years may be allowed if determined to be in the Tribes’ best interest and only in situations consistent with the Code of Federal Regulations.

In no case shall an agricultural lease exceed 25 years.

* + - * 1. For USDA Grants/improvements, all improvements will revert to the Tribes at the end of the applicable USDA Grant’s contractual period.
      1. All agricultural leased lands shall be managed by the lessee or permittee in accordance with recognized principles of:
         1. Sustained yield management;
         2. Integrated resource management;
         3. Sound conservation practices; and
         4. Applicable agricultural resource management plans.
      2. The Department must ensure that appropriate stipulations and or conservation plans are developed and incorporated in all agricultural leases.
      3. It shall be the responsibility of the lessee to utilize irrigation water in a manner that will not damage the land or resources, either on or off the leased premises, and to keep all operation and maintenance (O&M) charges paid up. Failure to keep O&M charges paid up shall be a lease violation causing the lease to be subject to sanctions up to and including cancellation.
      4. Lessees must maintain proof of ownership for all livestock utilizing agriculture leased lands.
      5. Only livestock marked with a brand owned by and registered to Lessees will be allowed on Tribal controlled leases
         1. Livestock shall only be allowed to be placed on leased land by immediate family members provided that:

those family members are in a then-existing shared farming or ranching operation with Lessee, and

those family members seeking to place their animals on the Leased land must, in advance of animal placement, formally add their names to the Lease in compliance with applicable Code of Federal Regulations requirements.

* + - 1. Subleasing.
         1. There shall be no subleasing of Lessee’s leased rights, interests, or privileges in lands leased from the Department.
         2. Violation of the sub-leasing provision will be cause for cancellation of the lease and all other Tribal leases and grazing permit privileges that the lessee and sub-lessee may have with the Tribe at time of violation. Both the lessee and sub-lessee will be ineligible to obtain agricultural lease or grazing permit privileges on Tribal controlled lands for five (5) years following cancellation.
         3. The Tribal Council shall have exclusive authority to approve or disapprove lease cancellations recommended by the Department which arise from subleasing.

1. **Grazing Permits**
   1. General
      1. This Ordinance Section shall apply to Tribal administered lands permitted for grazing. It does not apply to lands which have been leased for agriculture, home sites or business sites, or any lands reserved by the Tribal Council for any other purpose.
         1. Grazing lands under the administration of the Department may be divided into range units. Lands included in range units are not irrigated and their forage vegetation should be predominately native species. Range units may include Tribal land, individually-owned trust land, and federally or state-owned land.
            1. Range units may be recommended by the Department and must be approved by the Tribal Council.
            2. Other Tribal agriculture lands not divided into range units will be offered for lease under Section IV of this Ordinance.
            3. The boundaries of such range units shall be defined. Adjustments in these boundaries for resources management purposes may be made by the Tribal Council or its authorized representative.
         2. Grazing capacity and season of use for these range units shall be determined in accordance with the Code of Federal Regulations and accepted vegetation inventory protocols.
         3. Range units or parts thereof which utilization studies or other reliable surveys show to be deteriorating may be closed to grazing by the Tribal Council or its authorized representative, or by the Superintendent in the case of individually owned trust land, for such time as necessary for recovery of the grazing resources.
         4. At any time, the size or carrying capacity of a range unit is reduced while it is under permit, the Department shall make appropriate grazing permit fee adjustments.
         5. When a range unit or any part thereof is revoked for any reason other than revocation for due cause or for the protection of a Tribal grazing resource as described above, adjustment in fees and changes in size of carrying capacity will be made at the end of grazing season.
         6. If out of reasonable necessity the Department adjusts the size or carrying capacity of a unit, the permittee(s) shall be allowed not less than 30 days to remove livestock and property unless permittee(s) can present just cause for the allowance of additional time.
         7. If any time a permittee feels that the carrying capacity of a range unit is set too high or too low, the permittee may submit a written request to the Department asking for a re-evaluation of the relevant carrying capacity. The Department shall conduct such investigation, subject to budgetary constraints and staff availability, and shall apply accepted vegetation inventory protocols. Based on the investigation, the Department shall make a recommendation(s) to the Tribal Council which will have a sole discretion and authority to adjust the carrying capacity. The findings and conclusions must be made in writing and maintained with that parcel’s file for at least 5 years.
      2. Grazing permit shall be used to authorize grazing use of a range unit. To be valid, the grazing permit must be executed by the Tribal Council or its designated representative and/or by individual trust landowners, as appropriate, and approved by the Superintendent. The grazing permit shall be recorded at the Tribal Land Titles and Records Office.
      3. Permittees of Range Units shall be responsible to fence range lands on which livestock or animals are grazing sufficient to contain that livestock (sometimes called a “fence-in” requirement). Said fencing shall, at a minimum, meet the Lands Department’s Fencing Standards, which shall be contained in a stand- alone, Council-approved policy.
   2. Eligibility
      1. Any enrolled adult member of the CSKT is eligible to receive a grazing permit.
      2. Any group or association of Tribal members, organized with the approval of the Tribal Council, is eligible to receive a grazing permit. Such group or association shall be responsible to request Tribal Council approval every five years to renew its association status. The Tribal Council shall have sole discretion approving, rejecting, or seeking amendment to all such associations.
      3. Any eligible CSKT Tribal member(s) or association of individuals requesting a grazing permit must comply with all of the following:
         1. To be grazed on Leased Lands, the brand(s) must be 100% owned by a Tribal Member(s).
         2. Show proof of ownership of all livestock to be grazed under the permit (i.e. a state livestock association bill of sale).
         3. Show proof that the brand is in the name of the respective requester’s individual or association name. All livestock grazed on the range units must be so permanently marked.
         4. To be valid, the brand must be recorded in the requesting Tribal Member’s name, and may include the name of the Tribal Member’s spouse if the spouse is also a Tribal Member.
         5. Show compliance with other applicable animal-related Tribal Ordinances, such as Ordinance 14A.
      4. Range units that are inactive, surplus to the needs of Tribal members or presently unusable by Tribal members will be advertised to the general public for competitive bids in accordance with the Code of Federal Regulations and the process for advertisement described below.
   3. Grazing Permit Valuation
      1. Grazing permit rental determination must be consistent with federal regulations and rental value may be established by appraisal, competitive bidding, or other valuation method that determines representative value.

When an appraisal is used it must be prepared in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

* + - 1. The minimum grazing rental to be charged for both allocations and advertised units will be set by Tribal Council Resolution six months prior to each permit period.
      2. Grazing rental will be based on a specified rate per animal unit month (AUM) authorized to be grazed.
      3. No free grazing shall be permitted on any grazing unit covered by this Ordinance.
      4. The rental amount shall be determined by the Department during permit agreement negotiation.
      5. When individually owned trust land is a range unit, or is within the boundaries of a Tribal range unit and is not fenced or enclosed to exclude grazing use, the rental amount shall not be less than fair rental unless waived in writing by the landowner(s).
  1. The Grazing rental due date must be specified in the Agreement and must be consistent with federal regulations. Permit payments shall be based on factors including, but not limited to:
     1. Fixed amounts;
     2. Defined variable amounts;
     3. A combination of these.
  2. Allocation and Advertisement
     1. Allocations
        1. Any eligible member of the CSKT is eligible for award of a grazing permit by allocation.
        2. Any group or association of Tribal members organized with the approval of the Tribal Council is eligible for award of a grazing permit by allocation.
        3. Allocation applications shall be made to the Department on the prescribed form at least seven months prior to the expiration date of the existing grazing permit.
        4. If there is more than one applicant for any new or unallocated range unit, they each shall submit competitive sealed bids to the Department.
        5. The Department shall submit requests for allocation or the competitive bid amounts to the Tribal Council for approval.
        6. Upon Tribal Council approval, the Department shall execute a grazing permit.
     2. Advertisements
        1. The rental value rate authorized under Grazing Permit Valuations per AUM shall be determined by a fair market appraisal rate establishing the above Grazing Permit Valuation, and shall occur every five years.
        2. No proposal for installation of improvements in lieu of grazing fees shall be acceptable as a part of any bid. The highest bidder will be determined on the basis of a cash offer and any arrangements concerning allowance for improvements to be made may be negotiated by the Department, at its sole discretion, after the highest bidder on a cash basis has been determined.
        3. Unless otherwise stated, only sealed bids will be accepted. Where sealed bids are used, and there is a tie for the high-bid, then the tied bidders shall have the opportunity to submit a new bid, which shall not be lower than the original bid, according to a schedule detailed by the Department. If only one of the tied bidders submits a new bid then that bidder’s original bid shall become the high bid. If none of the tied bidders submits a new bid then the Department shall present the tied bids to the Tribal Council for the Tribal Council to select the best bid.
        4. If the sealed-bid process does not yield a consummated grazing permit, then the Department shall be authorized to pursue an agreement through a non-bid process. This process shall:
           1. Prioritize other bids that were not the highest bid, in the descending order of bid price, and then negotiated offers, whether solicited by the Department or otherwise tendered;
           2. Ensure that a negotiated rental is within 10% of the minimum advertised rental unless the Tribal Council or Superintendent determines that acceptance of a lesser amount is in the best interest of the landowner(s).
           3. Not enter into negotiations or negotiate a permit if an advertising period is scheduled to occur 30 or less calendar days from receipt of the negotiated offer.
  3. The Standard grazing permit term shall be not less than one year or more than 10 years.
     1. The Tribal Council, or Superintendent in the case of individually owned trust land, shall have authority to issue a longer permit term, not to exceed 25 years, if it is determined that such a longer term is in the best interest of the landowner(s). Prior to Tribal Council or Superintendent consideration of a permit term greater than 10 years, the Department will evaluate the proposal to determine whether or not a longer term is reasonable due to a substantial investment in the development or conservation of the lands by the permittee and provide a recommendation(s) to the Tribal Council or the Superintendent which shall have sole discretion to approve, not approve, modify or take no action on the proposal.
        1. The Conservation plan must cover the entire permit period and include management objectives for resource conservation. It must be developed by the Department, in consultation with the permittee(s), and signed by the Departmental representative and the permittee(s) prior to the issuance of the permit.
        2. All range units shall be managed by the permittee(s) in accordance with recognized principles of:
           1. Sustained yield management;
           2. Integrated resource management;
           3. Sound conservation practices; and
           4. Applicable agricultural resource management plans.
  4. Subleasing
     1. There will be no sub-leasing of grazing privileges on Tribal controlled range units.
        1. Sub-leasing defined: The act of willfully allowing parties, other than the party to whom the permit was issued by the Department, to use the property as if it were leased or permitted to them.
        2. Immediate family members shall not be allowed to run livestock on range units unless they are named as a permittee on the grazing permit (Immediate family is as defined in this Ordinance).
        3. Violation of the sub-leasing provision will be cause for cancellation of the permit where there is a violation of the sub-leasing provisions, and there is more than one permittee, then only the violating permittee(s) shall be subject to permit cancellation.
           1. All other agriculture lease and grazing permits held by the parties at fault, at the time of revocation, will also be cancelled.
           2. Both the permittee(s) at fault and the sub lessee will be ineligible to lease agricultural lands or obtain grazing permit privileges on Tribal controlled lands for five years following cancellation.
           3. The Tribal Council will determine whether to approve or disapprove the cancellation.

1. **Rights of Way, Easement, and Revocable Permit**
   1. Rights of way and easements may be granted by the Superintendent, Flathead Agency, upon approval of the Tribal Council or its authorized representative. Rights of way and easements will be granted in accordance with applicable federal regulations. Revocable permits shall be used to authorize entry upon or occupancy of Tribal lands or property. Such permits are not to be taken or construed as granting any leasehold interest or right in or to the land described therein, but are merely temporary permits, terminable and revocable in the discretion of the Tribal Council or their authorized representative at any time.
   2. Revocable permits may be issued as follows:
   3. Application will be made to the Department in writing, showing location of the road or trail, pipeline, or other property use to be made thereof, length of time needed, and an offer of payment for use or damages.
   4. The application will be referred to the Land Committee for approval. Such approval shall constitute authority for the Tribal Council or its authorized representative to execute a use permit.
2. **Land Acquisition and Disposal Program**
   1. General
      1. It is the intent of the Tribes to improve their economic base and that of their members by consolidating Tribal land holdings into more manageable units and purchasing lands for expansion of both Tribal and individual operations. Special consideration will be given to acquiring or disposing of lands that include, but are not limited to, the exchange or sale of isolated tracts, tracts adjacent to Tribal lands, tracts useful for commercial or industrial purposes, and the elimination of fractionated heirship within the Reservation. Tribal land purchases, and Tribal sales to members will be carried out under the authorization of the Act of July 18, 1968, P.L. 90-402 and applicable Tribal or federal regulation or policy.
      2. All applications for the sale to, or exchange of, land with the Tribes shall be reviewed by the Land Committee and forwarded to the Council with the Committee’s recommendations. The Committee shall recommend acquisition of any tract covered in such applications if the purchase is necessary or desirable to carry out the land purchase program; otherwise, the Committee shall recommend against acquisition.
   2. Land Purchases -Tribal Use Only
      1. Commercial and industrial sites may be purchased for establishment or expansion of Tribal enterprises, or for the purpose of leasing to promote employment and the overall economic development of the Reservation area. Plans must be developed to insure beneficial use prior to approval by the Council.
      2. Lands may be purchased for the establishment of homesite and recreation areas. Plans must be developed to insure beneficial use prior to approval by Council.
      3. Where required, lands may be acquired for rights of way to insure access to tribal property.
   3. Land Purchase – For Resale to Tribal Members
      1. Any land acquired under this program shall be taken in the name of “The United States of America in Trust for The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation”, pursuant to Public Law 90-402.
      2. Exchanges – Tribal Land for Other Property Upon approval of the Secretary of Interior, Tribal lands may be exchanged for other lands of comparable value after a determination has been made by the Tribal Council that such trade is in the best interest of the Tribes and member thereof.
      3. Sales- Tribal Lands Owned Prior to July 18, 1968 – Any lands owned by the Tribes prior to the enactment of Public Law 90-402, dated July 18, 1968, may be sold only after special legislation enacted by the Congress of the United States.
      4. Acquisitions - To minimize fractionated parcels and heirship problems, as an aid to Tribal members with uneconomic and unmanageable multiple ownership problems, and to avoid the threat of such tracts transitioning to fee status, the Tribal Council may acquire undivided interest in such tracts as they become available for purchase, to be managed or disposed as determined by the Tribal Council.
3. **BONDING**
   1. General
      1. All leases and permits will be protected by an adequate performance bond except as specified in F below. All collections from bonds will be used to correct deficiencies on the property involved.
   2. Improvement/Performance Bonds
      1. The Department shall require a security bond for all improvements, subject to Departmental discretion, as necessary to protect Tribal resources. This bond must that satisfy the requirements of a “bond”, as defined in Section II of this ordinance.
   3. Agricultural Leases and Grazing Permits
      1. Financial surety must be sufficient to pay one year’s rental, the performance of any addition obligation(s), and the restoration and reclamation of the premises to their pre-lease condition, as determined by a Department compliance inspection report.
      2. Lessees and Permittees must post a surety that satisfies the requirements of a “bond”, as defined in Section II of this ordinance.
   4. Business and Commercial Leases and Revocable Permits
      1. Financial surety must be sufficient to pay one year’s rental, the performance of any addition obligation(s), and the restoration and reclamation of the premises to their pre-lease condition, as determined by a Department compliance inspection report.
      2. Lessees must post a surety that satisfies the requirements of a “bond”, as defined in Section II of this ordinance.
   5. Homesite Leases
      1. Lessees must post a surety that satisfies the requirements of a “bond”, as defined in Section II of this ordinance.
   6. Revocable Permits
      1. Bonds for revocable permits will be required at the discretion of the Tribal Council. In the event bond is required, Permittee must post a surety that satisfies the requirements of a “Bond”, as defined in Section II of this ordinance.
4. **CONSERVATION EASEMENTS**
   1. Policy. The Tribal Council declares that it is the policy of the Tribes that:
      1. Wetlands and riparian areas provide cultural, ecological and social benefits in the form of fish and wildlife habitat, flood control, erosion control, water quality enhancement, traditional cultural materials production, aesthetics, and recreation;
      2. Tribal use and benefit of aquatic resources, including wetlands and riparian areas, is one of the central purposes of the Flathead Reservation;
      3. Wetlands and riparian areas are areas of critical environmental concern;
      4. In the short- and long-term goals for conservation easements, the Tribes shall strive to restore the health and occurrence of Flathead Reservation wetland and riparian areas to historic conditions;
      5. A conservation plan for the protection of Tribal wetlands and riparian areas be promptly developed as stipulated in the conservation plan by the designated department, program, or entity;
      6. The Tribal Council exercises its constitutional authority to protect and preserve Flathead Reservation wetlands and riparian areas by granting the conveyance of conservation easements to the United States for specified purposes on such lands, subject to approval of the Secretary of the Interior pursuant to 25 U.S.C. 81 (2004).
   2. Saving Provisions. Be it provided that:
      1. Nothing in this Chapter shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use rights or authorization existing on the date of approval of this Ordinance;
      2. Nothing in this Chapter shall be construed as:
         1. Limiting or restricting the power and authority of the CSKT;
         2. Affecting in any way any law governing appropriation or use of, or Tribal right to, water on the Flathead Reservation;
         3. Expanding or diminishing Tribal, Federal or State jurisdiction, responsibility, interest, or rights in water resources development or control or the authority to exercise licensing or regulatory function related thereto;
         4. Displacing, superseding, limiting, or modifying any compact or the jurisdiction or responsibility of any legally established joint or common agency of the Tribes, the State of Montana and/or the United States.
   3. Definitions. For the purposes of this Chapter, the following definitions will apply:
      1. Conservation means the protection, preservation, restoration, creation, and/or enhancement of natural resources.
      2. Land or lands means land that is located within the boundaries of the Flathead Reservation the title to which is held by:
         1. The United States in trust for the CSKT; or
         2. The CSKT subject to a restriction by the United States against alienation.
      3. Riparian refers to areas which are transitional between aquatic and upland ecosystem areas, are distinguished by biophysical conditions, ecological processes, and biota, and are areas through which surface and subsurface hydrology connects water bodies with their adjacent upland. Riparian areas include those portions of terrestrial ecosystems, which significantly influence the exchanges of energy and matter with aquatic ecosystems (i.e., the zones of influence). Riparian areas are adjacent to and border lakes, reservoirs, estuaries, potholes, springs, seeps, peatlands, (bogs, fens), wet meadows, vernal pools, and ephemeral, intermittent, or perennial streams.
      4. Tribal Council means the duly elected governing body of the CSKT.
      5. Tribes or Tribal means of or pertaining to the CSKT.
      6. United States means the federal government and any of its duly authorized agencies, departments, administrations, courts, or other instrumentalities.
      7. Wetlands are lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Wetlands must have one or more of the following three attributes:
         1. At least periodically, the land supports predominantly wetland plants (hydrophytes);
         2. The substrate is predominantly undrained wetland soils (hydric soils); or
         3. The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.
   4. Conservation Easements in General. Where the Tribes convey an interest in land for a specified limited purpose pursuant to this Chapter, such conveyance shall be by conservation easement.
   5. Duration of Conservation Easements. The Tribes may grant conservation easements pursuant to this Chapter in perpetuity or for a term of years.
   6. United States as Grantee. Conservation easements granted by the Tribes pursuant to this chapter may only be granted to the United States and may not be granted to any other person or entity.
   7. Types of Permissible Easements. Easements or restrictions under this Chapter may prohibit any or all of the following:
      1. Structures – Construction or placing of buildings, camp trailers, house trailers, mobile homes, roads, signs, billboards, or other advertising, utilities, or other structures above the ground;
      2. Landfill – dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
      3. Vegetation – removal or destruction of vegetation:
         1. Livestock Grazing – grazing or allowing livestock on the easement area including establishing or maintaining any commercial feedlot, defined for purposes of the Chapter as a facility used for the purpose of receiving, confining, and feeding livestock for hire.
         2. Mining – excavation, dredging, or removal of soil, sand, gravel, rock, minerals or other surface or subsurface material;
         3. Incompatible Uses – surface use except for such purposes necessary to preserve, enhance, restore, or create wetlands and riparian resource functions and values;
         4. Acts Detrimental to Conservation – activities detrimental to fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation;
         5. Subdivision – subdivision of land into multiple independently platted parcels.
   8. Reservation of Rights. The Tribes, in each conservation easement granted pursuant to this chapter, shall reserve to themselves:
      1. Title – record title, along with Tribes’ right to convey, transfer, and otherwise alienate title to these reserved rights;
      2. Quiet Enjoyment – the right to quiet enjoyment of the rights reserved on the easement area;
      3. Access Control – the right to prevent trespass and control access;
      4. Traditional and Spiritual Uses – the right of Tribal members to conduct traditional, customary uses of flora and fauna and spiritual uses including but not limited to hunting, fishing and gathering;
      5. Rights Not Granted – all rights and interests not expressly granted pursuant to the terms of the easement.
   9. Assignability of Conservation Easements. All conservation easements granted by the Tribes pursuant to this Chapter shall be non-assignable and non-transferable, unless approved by the Tribal Council and expressly agreed to in the terms of the written easement agreement. To effectuate the intent of this part, there shall be an express clause in each document granting a conservation easement pursuant to this Chapter which states that the conservation easement is non-assignable and non-transferable.
   10. Easements to Run with the Land. Conservation easements granted by the Tribes pursuant to this Chapter VI shall be considered to run with the land whether or not such fact is stipulated in the instrument of conveyance or ownership.
   11. Recording and Description of Conservation Easements. Any conservation easement granted by the Tribes pursuant to this Chapter VI shall, upon execution and approval, be submitted by the Tribes to the Land Titles and Records Office charged with maintaining such records for Flathead Reservation Indian lands pursuant to applicable federal regulations. The conservation easement shall be submitted so as to affect its title in the manner of other conveyances of interest in land and shall describe the land subject to said conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.
   12. Enforcement.
       1. The United States, as holder of a conservation easement, may enforce the terms of such easement.
       2. Conservation easements shall be first enforced in the Tribal Court by injunction or proceedings in equity when allowed by federal law. Once the available Tribal remedies have been exhausted, then a conservation easement may alternatively be enforced in United States District of Montana by injunction or proceedings to equity.
       3. Representatives of the United States shall be entitled to enter the land subject to a conservation easement in a reasonable manner and at reasonable times to assure compliance.
   13. Limited Waiver of Sovereign Immunity.
       1. The Tribes hereby waive their right to assert sovereign immunity as a defense against suit commenced by the United States in the Tribal Court to enforce the terms of a conservation easement granted by the Tribes pursuant to this Chapter.
       2. The Tribes hereby waive their right to assert sovereign immunity as a defense against suit commenced by the United States in United States District Court for the District of Montana to enforce the terms of a conservation easement granted by the Tribes pursuant to this Chapter on the condition that the United States first exhaust all remedies available to it in the Tribal Court that are allowed by federal law.
       3. These limited waivers of sovereign immunity are granted only to the United States for the limited purpose of enforcing the terms of a conservation easement granted by the Tribes pursuant to this Chapter and are not granted to any other party or for any other purpose.
       4. The extent of this waiver of sovereign immunity is only to the extent that is expressly required by applicable federal regulations and only for the where such waiver is included in respective signed agreements between the CSKT and United States.