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## APPROVING PUEBLO OF SANDIA INDIAN LANDS LEASING REGULATIONS AND PROCEDURES

Resolution 2013 - 037

At a duly called meeting, the Pueblo of Sandia Tribal Council ("Council") passed the following resolution:

**WHEREAS**, the Pueblo of Sandia ("Pueblo") is governed by a Council made up of appointed representatives who act in accordance with the custom and tradition, and;

**WHEREAS**, the Council is the governing body of the Pueblo and is empowered to act in the best interest and well-being of the Sandia people, and is charged with the duty of protecting the health, security, and general welfare of the Pueblo, and;

**WHEREAS**, the Council is the ultimate authority to negotiate permits, contracts, and official documents on behalf of the community, and;

**WHEREAS**, pursuant to the HEARTH Act Amendments to the federal leasing statute for Restricted Indian Lands, 25 U.S.C. § 415, the Pueblo may assume the power to directly approve, monitor and enforce leases of Pueblo Indian Lands in accordance with its own Regulations; provided that such Regulations are approved by the Bureau of Indian Affairs of the U.S. Interior Department ("BIA"); and

**WHEREAS**, the Tribal Council has determined that the adoption of the Pueblo's own Leasing Regulations, and obtaining the BIA's approval of such Leasing Regulations, will serve and promote the Pueblo's interests of sovereignty, self-determination and economic development.

**NOW, THEREFORE, BE IT RESOLVED**, that the Leasing Regulations presented to this Tribal Council and attached to this Resolution are hereby adopted in the form presented, subject to such further technical or textual modifications of a non-substantive nature that the Governor may approve in order to obtain BIA approval; and

**BE IT FURTHER RESOLVED**, that the Leasing Regulations be submitted to BIA for approval in accordance with the HEARTH Act Amendments.

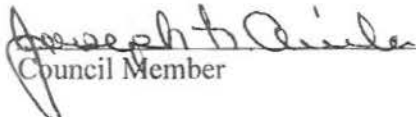
## CERTIFICATION

The foregoing resolution was considered and adopted at a duly called meeting of the Pueblo of Sandia tribal council on this 5 day of March 2013 at which time a quorum was present with 11 in favor, 0 opposed, and 0 abstaining.

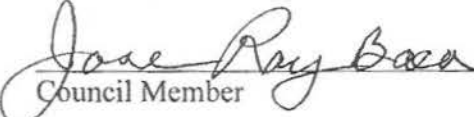
  
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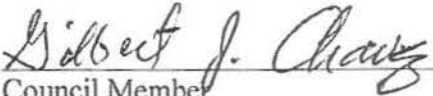
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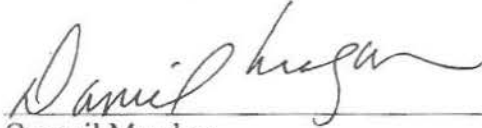
  
Secretary

  
Council Member

  
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Council Member

**PUEBLO OF SANDIA**  
**INDIAN LANDS LEASING**  
**REGULATIONS AND PROCEDURES**

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**Part A—General Provisions**  
**Purpose, Definitions, and Scope**

**§ 001 What is the purpose of these Regulations?**

(a) The purpose of these Regulations is to promote leasing on Pueblo Indian land for economic development and other purposes. At present, these Regulations do not cover leasing for Agricultural, Residential or Wind and Solar Resource purposes. Unless and until Parts addressing those forms of leasing transactions are adopted by the Tribal Council and approved BIA as required by federal law, those forms of lease will be subject to BIA approval under Part 162 of Title 25 of the Code of Federal Regulations.

(b) These Regulations specify:

- (1) Conditions and authorities under which the Pueblo will approve leases of Pueblo Indian land;
- (2) How to obtain leases;
- (3) Terms and conditions required in leases; and
- (4) How the Pueblo administers and enforces leases.

(c) If any section, paragraph, or provision of these Regulations is stayed or held invalid, the remaining sections, paragraphs, or provisions of these Regulations remain in full force and effect.

**§ 002 How are these Regulations subdivided?**

(a) These Regulations include multiple parts relating to:

- (1) General Provisions (Part A);
- (2) Agricultural Leases (Part B) [Reserved];
- (3) Residential Leases (Part C) [Reserved];
- (4) Business Leases (Part D);
- (5) Wind Energy Evaluation, Wind Resource, and Solar Resource Leases (Part E) [Reserved];
- (6) Records (Part F);
- (7) Environmental Review (Part G); and
- (8) Appeals (Part H)



(b) [Reserved]

**§ 003 What key terms do I need to know?**

*Adult* means a person who is 18 years of age or older.

*Appeal bond* means a bond posted upon filing of an appeal.

*Approval* means written authorization by the Governor or a delegated official, including the Responsible Official, or, where applicable, the “deemed approved” authorization of an amendment or sublease.

*Assignment* means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee’s rights, and assumes all or some of the lessee’s obligations, under a lease.

*BIA* means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior.

*Business day* means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Pueblo is closed to the public.

*Cancellation* means Pueblo action to end a lease pursuant to these Regulations.

*Consent or consenting* means written authorization by the Pueblo to a specified action.

*Constructive notice* means notice:

- (1) Posted at the tribal government office and/or tribal community building of the Pueblo; and
- (2) Published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

*Court of competent jurisdiction* means a Federal, tribal, or State court with jurisdiction.

*Day* means a calendar day, unless otherwise specified.

*Environmental Review* means a review of the anticipated environmental effects of a proposed leasing transaction conducted under Part G of these Regulations.

*Equipment installation plan* means a plan that describes the type and location of any improvements to be installed by the lessee to evaluate the wind resources and a schedule showing the tentative commencement and completion dates for installation of those improvements.



*Fair market rental* means the amount of rental income that a leased tract of Pueblo Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.

*Fee interest* means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

*Governor* means the Governor of the Pueblo of Sandia.

*Holdover* means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

*Housing for public purposes* means multi-family developments, single-family residential developments, and single-family residences:

- (1) Administered by the Pueblo or tribally designated housing entity (TDHE); or
- (2) Substantially financed using a tribal, Federal, or State housing assistance program or TDHE.

*Immediate family* means, in the absence of a definition under applicable tribal law, a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or member of the household.

*Indian* means:

- (1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;
- (2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and
- (3) With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in paragraph (1) or (2) of this definition or any person who owns a trust or restricted interest in a parcel of such land in that State.

*Indian land* means any tract in which any interest in the surface estate is owned by the Pueblo in trust or restricted status.

*Indian landowner* means, for purposes of these Regulations, the Pueblo which owns an interest in Indian land.

*Individually owned Indian land* means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

*Indian tribe* means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

*Interest, when used with respect to Indian land*, means an ownership right to the surface estate of Indian land.

*Lease* means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possess Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Indian landowners' right to possess the leased premises only to the extent provided in the lease.

*Lease document* means a lease, amendment, assignment, sublease, or leasehold mortgage.

*Leasehold mortgage* means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

*Leasing Officer* means the person designated by the Governor and/or Tribal Council to negotiate a lease on behalf of the Pueblo, make necessary arrangements related to it and administer the lease if entered into, all from the Pueblo's commercial and economic perspective as landowner; provided that the Governor may choose to directly serve in such role for certain major leasing transactions; and provided further that the Leasing Officer will be supervised by the Governor in accordance with the Pueblo's personnel policies.

*Leasing Transaction* means the anticipated use of Pueblo Indian land that is subject to a proposed lease to be granted upon approval under these Regulations.

*Lessee* means a person or entity who has acquired a legal right to possess Pueblo Indian land by a lease under these Regulations.

*LTRO* means the Land Titles and Records Office of the BIA.

*LRO* means the Land's Records Office of the Pueblo.

*Mail* means to send something by U.S. Postal Service or commercial delivery service.

*Minor* means an individual who is less than 18 years of age.

*Mortgagee* means the holder of a leasehold mortgage.

*NEPA* means the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.

*Nominal rental* or *nominal compensation* means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

*Notice of violation* means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.

*Performance bond* means security for the performance of certain lease obligations, as furnished by the lessee, or a guaranty of such performance as furnished by a third-party surety.

*Permanent improvements* means buildings, other structures, and associated infrastructure attached to the leased premises.

*Permit* means a written, non-assignable agreement between the Pueblo and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Pueblo Indian land, for a specified purpose.

*Permittee* means a person or entity who has acquired a privilege to use Pueblo Indian land by a permit.

*Power of attorney* means an authority by which one person enables another to act for him or her as attorney-in-fact.

*Pueblo* means the Pueblo of Sandia. When these Regulations refer to action to be taken by the Pueblo, such action may be taken by the Governor, Tribal Council or their designee(s), as appropriate to the specific action at issue.

*Pueblo Indian land* means Indian land to which title is held by or for the benefit of the Pueblo.

*Responsible Official* means the person designated from time to time by the Governor and/or Tribal Council to oversee the regulatory requirements for approving and administering leases pursuant to these Regulations, including environmental review pursuant to Part G, provided that the duties of the Responsible Official may be delegated among several persons on the Pueblo staff, e.g., Lands and Environment Directors, as appropriate; and provided further that the Responsible Official will be supervised by the Governor in accordance with the Pueblo's personnel policies and procedures.

*Restoration and reclamation plan* means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

*Secretary* means the Secretary of the Interior.

*Single-family residence* means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by applicable tribal law or other tribal authorization.

*Single-family residential development* means two or more single-family residences owned, managed, or developed by a single entity.

*Sublease* means a written agreement by which the lessee grants to an individual or entity a right to possession no greater than that held by the lessee under the lease.

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

*TDHE* means a tribally designated housing entity under 25 U.S.C. 4103(22), a tribally-sponsored or tribally sanctioned not-for-profit entity, or any limited partnership or other entity organized for the purpose of developing or improving low-income housing utilizing tax credits.

*Termination* means action by the Pueblo to end a lease.

*Trespass* means any unauthorized occupancy, use of, or action on any Pueblo Indian land.

*Tribal Council authorization* means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

*Tribal Council* means the Tribal Council of the Pueblo of Sandia.

*Tribal land* means any tract, or interest therein, in which the surface estate is owned by one or more tribes in trust or restricted status, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

*Tribal land assignment* means a contract, agreement or action of Tribal Council that conveys to tribal members or wholly owned tribal corporations any rights for the use of Pueblo Indian lands, assigned by the Pueblo in accordance with tribal laws or customs.

*Tribal law* means the body of non-Federal law that governs lands and activities under the jurisdiction of the Pueblo, including ordinances or other enactments by the Pueblo's Tribal Council, and tribal court rulings.

*Trust or restricted land* means any tract, or interest therein, held in trust or restricted status.

*Trust or restricted status* means:

(1) That the United States holds title to the tract or interest in trust for the benefit of one or more tribes or individual Indians; or

(2) That one or more tribes or individual Indians holds title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

*USPAP* means the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

*Us/we/our* means the Pueblo.

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

#### **§ 004 To what land do these Regulations apply?**

(a) These Regulations apply solely to Indian land owned by the Pueblo in trust or restricted status, referred to herein as “Pueblo Indian Land”. These Regulations do not apply to any fee land owned by the Pueblo that is not in trust or restricted status. The leasing of any such fee lands shall be governed by tribal law, custom and practice other than these Regulations.

#### **When to Get a Lease**

#### **§ 005 When do I need a lease to authorize possession of Pueblo Indian land?**

(a) You need a lease under these Regulations to possess Pueblo Indian land if you meet one of the criteria in the following table, unless you are authorized to possess or use the Pueblo Indian land by a land use agreement not subject to these Regulations under § 006(b) or by a permit.

If you are:	then you must obtain a lease under these Regulations:
A person or legal entity (including an independent legal entity) other than an unincorporated enterprise, owned and operated by the Pueblo who is not an owner of the Pueblo Indian land	From the Pueblo before taking possession of the land or any portion thereof.

(b) You do not need a lease to possess Pueblo Indian land if:

(1) You are the Pueblo or an unincorporated enterprise of the Pueblo who owns 100 percent of the trust or restricted interests in a tract; or

(2) If you receive Tribal Council authorization to manage specific Pueblo Indian Land and are Sandia Business Development Corporation, or another 25 U.S.C. 477 corporate entity that may hereafter be formed, that manages or has the power to manage the tribal land directly under its Federal charter or under a tribal authorization (not under a lease from the Pueblo). You must record documents in accordance with § 443.

#### **§ 006 To what types of land use agreements do these Regulations apply?**

(a) These Regulations apply to leases of Indian land entered into under 25 U.S.C. 415(a) and (h).

(b) These Regulations do not apply to:

(1) Land use agreements entered into under other statutory authority, such as the following:

This part does not apply to:	which are covered by:
(i) Contracts or agreements that encumber tribal land under	25 U.S.C. 81, 25 CFR part 84
(ii) Traders' licenses	25 CFR part 140
(iii) Timber contracts	25 CFR part 163
(iv) Grazing permits	25 CFR part 166
(v) Rights-of-way	25 CFR part 169
(vi) Mineral leases, prospecting permits, or mineral development agreements	25 CFR parts 211, 212, 213, 225, 226, 227
(vii) Tribal land assignments and similar instruments authorizing uses of tribal land	tribal laws

(2) Leases of water rights associated with Pueblo Indian land, except to the extent the use of water rights is incorporated in a lease of the land itself.

(3) The following leases, which do not require Pueblo approval, except that you must record these leases in accordance with § 443:

(i) A lease of tribal land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years; and

(ii) A lease of Pueblo Indian land under any future special act of Congress that may hereafter be enacted authorizing leasing without BIA approval.

#### **§ 007 To what permits do these Regulations apply?**

(a) Permits for the use of Pueblo Indian land do not require approval under these Regulations; however, you must fulfill the following requirements:

(1) Ensure that permitted activities comply with all applicable environmental and cultural resource laws; and

(2) Submit all permits to the appropriate Pueblo office to allow them to maintain a copy of the permit in their records. If the Pueblo determines within 10 days of submission that the document does not meet the definition of "permit" and grants a legal interest in Indian land, the Pueblo will notify you that a lease is required under these Regulations.

(b) The following table provides examples of some common characteristics of permits versus leases.

Permit Lease

Does not grant a legal interest in Pueblo Indian land	Grants a legal interest in Pueblo Indian land
Shorter term	Longer term
Limited use	Broader use with associated infrastructure
Permittee has non-possessory right of access	Lessee has right of possession, ability to limit or prohibit access by others
Pueblo may terminate at any time	Pueblo may terminate under limited circumstances

(c) The BIA will not administer or enforce permits on Pueblo Indian land.

**§ 008 Do these Regulations apply to lease documents I submitted to BIA for approval prior to BIA approval of these Regulations?**

This part applies to all lease documents submitted for approval by the Pueblo after BIA approval of these Regulations on [Insert date of approval]. If you submitted your lease document to BIA for approval before [Insert date of approval], approval of the submitted lease documents will be processed pursuant to 25 C.F.R., Part 162, unless you withdraw them from BIA review and submit them to the Pueblo for approval under these Regulations.

**§ 009 Do I need Pueblo approval of a subleasehold mortgage?**

Unless the lease or sublease provides otherwise, or the parties request, you do not need the Pueblo's approval of a subleasehold mortgage. If the lease or sublease requires, or parties request, the Pueblo's approval, the Pueblo will use the procedures governing its review of leasehold mortgages.

How to Get a Lease

**§ 010 How do I obtain a lease?**

(a) This section establishes the basic steps to obtain a lease.

(1) Prospective lessees must:

Directly negotiate with the Leasing Officer of the Pueblo for a lease.

(2) Prospective lessees and the Leasing Officer of the Pueblo must:

(i) submit it to the Tribal Council for approval of its terms; and

(ii) Prepare the required information and analyses, including information to facilitate Responsible Official's analysis under applicable environmental and cultural resource requirements; and



(iii) Ensure the lease complies with the requirements in subpart C for residential leases, if added to these Regulations and approved by BIA, subpart D for business leases, or subpart E for wind energy evaluation, wind resource, or solar resource leases, if added to these Regulations and approved by BIA; and

(3) Prospective lessees or the Leasing Officer of the Pueblo must submit the lease, and required information and analyses, to the Responsible Official, for his or her review and approval.

(b) Generally, business leases will not be advertised for competitive bid.

**§ 011 How does a prospective lessee identify and contact the Leasing Officer of the Pueblo to negotiate a lease of Pueblo Indian Land?**

(a) Prospective lessees may submit a written request to the Governor of the Pueblo to identify and provide contact information for the Leasing Officer of the Pueblo with whom the prospective lessee may seek to negotiate a lease.

(b) The Governor's office may assist prospective lessees in contacting the Leasing Officer and any other designated officials of the Pueblo for the purpose of negotiating a lease, upon request.

**§ 012 What are the consent requirements for a lease?**

(a) The Tribal Council must consent to any grant of a lease on Pueblo Indian land and approve the terms of the lease.

(b) Pueblo Indian land subject to a tribal land assignment may only be leased with the consent of the Pueblo, and any consent of the Tribal Member assignee that may be required under tribal law, custom and tradition.

**§ 013 Who is authorized to consent to a lease?**

(a) The Tribal Council may consent to a lease of Pueblo Indian land.

*Lease Administration*

**§ 014 What laws will apply to leases approved under these Regulations?**

(a) In addition to these Regulations themselves, leases approved under these Regulations:

(1) Are subject to applicable Federal laws and any specific Federal statutory requirements that are not incorporated in these Regulations;

(2) Are subject to tribal law, subject to paragraph (b) of this section; and

(3) Are not subject to State law or the law of a political subdivision thereof except that:

(i) State law or the law of a political subdivision thereof may apply in the specific areas and circumstances in the Pueblo's Indian country where the Pueblo has made it expressly applicable;

(ii) State law may apply in the specific areas and circumstances in Indian country where Congress has made it expressly applicable; and

(iii) State law may apply where a Federal or tribal court has expressly applied State law to a specific area or circumstance in Indian country in the absence of Federal or tribal law.

(b) Tribal laws generally apply to land under the jurisdiction of the Pueblo, except to the extent that those tribal laws are inconsistent with applicable Federal law. However, these Regulations may be superseded or modified by other tribal laws, as long as:

(1) The tribe has notified the prospective lessee of the superseding or modifying effect of the tribal laws;

(2) The superseding or modifying of the regulation would not violate a Federal statute or judicial decision, or conflict with the general trust responsibility under Federal law; and

(3) The superseding or modifying of the regulation applies only to Pueblo Indian land.

(c) Unless prohibited by Federal law, the parties to a lease may subject that lease to State or local law in the absence of Federal or tribal law, if:

(1) The lease includes a provision to this effect; and

(2) The Pueblo expressly agrees to the application of State or local law.

(d) An agreement under paragraph (c) of this section does not waive the Pueblo's sovereign immunity unless the Pueblo expressly states its intention to waive sovereign immunity in the lease of Pueblo Indian land.

**§ 015 May a lease contain a preference consistent with tribal law for employment of tribal members?**

A lease of Pueblo Indian land may include a provision, consistent with tribal law, requiring the lessee to give a preference to qualified tribal members, based on their political affiliation with the tribe.

**§ 016 Will the Pueblo comply with tribal and federal laws in making lease decisions?**

Unless contrary to Federal law, the Pueblo will comply with tribal laws in making decisions regarding leases, including tribal laws regulating activities on leased land under tribal jurisdiction, including, but not limited to, tribal laws relating to land use, environmental protection, and historic or cultural preservation.

#### **§ 017 What taxes apply to leases approved under these Regulations?**

(a) Subject only to applicable Federal law, permanent improvements on the leased land, without regard to ownership of those improvements, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Pueblo under the Pueblo's Tax Ordinance.

(b) Subject only to applicable Federal law, activities under a lease conducted on the leased premises are not subject to any fee, tax, assessment, levy, or other charge (e.g., business use, privilege, public utility, excise, gross revenue taxes) imposed by any State or political subdivision of a State. Activities may be subject to taxation by the Pueblo under the Pueblo's Tax Ordinance.

(c) Subject only to applicable Federal law, the leasehold or possessory interest is not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Leasehold or possessory interests may be subject to taxation by the Pueblo under the Pueblo's Tax Ordinance.

#### **§ 018 [Reserved]**

#### **§ 019 May a lease address access to the leased premises by roads or other infrastructure?**

A lease may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR part 169. Roads or other infrastructure within the leased premises do not require compliance with 25 CFR part 169 during the term of the lease, unless otherwise stated in the lease.

#### **§ 020 May a lease combine tracts?**

(a) The Pueblo may approve a lease that combines multiple tracts of Pueblo Indian land into a unit, if the Pueblo determines that unitization is:

- (1) In the Pueblo's best interest; and
- (2) Consistent with the efficient administration of Pueblo Indian land.

(b) For a lease that covers multiple tracts, the Pueblo consent requirement applies to each tract separately.

#### **§ 021 What are the Responsible Official's responsibilities in approving leases?**

(a) The Responsible Official will work to provide assistance to the Pueblo in leasing its Pueblo Indian land, either through negotiations or advertisement.

(b) The Responsible Official will promote tribal control and self-determination over Pueblo Indian land and other land under the Pueblo's jurisdiction, including through contracts and self-

governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f et. seq.

(c) The Responsible Official will promptly respond to requests for Pueblo approval of leases, as specified in § 440.

(d) The Responsible Official will work to ensure that the use of Pueblo Indian land is consistent with the Pueblo's wishes and applicable tribal law.

**§ 022 What are the Responsible Official's responsibilities in administering and enforcing leases?**

(a) Upon receipt of information that the lessee has failed to comply with the terms and conditions of the lease, the Responsible Official will promptly take appropriate action, as specified in § 464. Nothing in these Regulations prevents the Pueblo from exercising remedies available to the Pueblo under the lease or applicable law.

(b) The Responsible Official will promptly respond to requests for approval of amendments, assignments, leasehold mortgages, and subleases, as specified in subparts D.

(c) The Responsible Official will respond to the Tribal Council's concerns regarding the management of Pueblo Indian land.

(d) The Responsible Official will take emergency action as needed to preserve the value of Pueblo Indian land under § 024.

**§ 023 What if an individual or entity takes possession of or uses Pueblo Indian land without an approved lease or other proper authorization?**

If an individual or entity takes possession of, or uses, Indian land without a lease and a lease is required, the unauthorized possession or use is a trespass. The Pueblo may take action to recover possession, including eviction, on its own behalf and pursue any additional remedies available under applicable law, including referring the matter to BIA to take action required or permitted under federal law.

**§ 024 May the Pueblo take emergency action if Pueblo Indian land is threatened?**

(a) The Pueblo may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate and significant harm to Pueblo Indian land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm, or involving BIA pursuant to the terms and limitations of federal law.

(b) The Pueblo will make reasonable efforts to notify all parties interested in the lease before and after taking emergency action. In all cases, the Pueblo will notify all parties interested in the lease after taking emergency action by actual or constructive notice. The Responsible Officer

will provide written notification of any action to the Governor and Tribal Council before and after taking emergency action.

**§ 025 May decisions under this part be appealed?**

Appeals from Responsible Official decisions under this part may be taken under Part H of these Regulations, except for deemed approvals and as otherwise provided in this part. For purposes of appeals from Responsible Official decisions under this part, “interested party” is defined as any person whose own direct economic interest is adversely affected by an action or decision. The Responsible Officials decision to disapprove a lease may be overturned only by the Tribal Council as provided in Part H. Responsible Officials’ decision to disapprove any other lease document may be overturned only by the Tribal Council to whom the lessee may appeal as provided in Part H.

**§ 026 Who can answer questions about leasing?**

A prospective lessee may contact the Governor’s office for answers to questions about the leasing process.

**§ 027 What documentation may the Responsible Official require in approving, administering, and enforcing leases?**

(a) The Responsible Official may require that the parties provide any pertinent environmental and technical records, reports, and other information (e.g., records of lease payments), related to approval of lease documents and enforcement of leases.

(b) The Responsible Official may adopt environmental assessments and environmental impact statements prepared by a Federal agency, Indian tribe, entity, or person under 43 CFR 46.320 and 42 CFR 1506.3, including those prepared under 25 U.S.C. 4115 and 25 CFR part 1000, or may conduct his or her own review under Part G of these Regulations. The Responsible Official may use any reasonable evidence that a Federal agency has accepted the environmental report, including but not limited to, letters of approval or acceptance.

(c) Upon the Responsible Officials’ request, the parties must make appropriate records, reports, or information available for the Responsible Officials’ inspection and duplication. The Responsible Official will keep confidential any information that is marked confidential or proprietary and will exempt it from public release to the extent allowed by law. The Responsible Official may, at his or her discretion, treat a lessee’s failure to cooperate with such request, provide data, or grant access to information or records as a lease violation.

**§ 028 How may Pueblo Departments and Authorities obtain information about leases on Pueblo Indian land?**

Upon request of a Pueblo Department or Authority, the Responsible Official will promptly provide information on the status of leases on tribal land.

**§ 029 How does the Responsible Official provide notice to the parties to a lease?**

(a) When these Regulations require the Responsible Official to notify the parties of the status of his or her review of a lease document (including but not limited to, providing notice to the parties of the date of receipt of a lease document, informing the parties of the need for additional review time, and informing the parties that a lease proposal package is not complete):

(1) For leases of Pueblo Indian land, the Responsible Official will notify the lessee and the Pueblo by mail.

(b) When these Regulations require the Responsible Official to notify the parties of his or her determination to approve or disapprove a lease document, and to provide any right of appeal:

(1) For leases of Pueblo Indian land, the Responsible Official will notify the lessee and the Pueblo by mail.

**Part B—Agricultural Leases [Reserved]**

**Part C—Residential Leases [Reserved]**

**Part D—Business Leases**  
**Business Leasing General Provisions**

**§ 401 What types of leases does this Part cover?**

(a) This Part covers both ground leases (undeveloped land) and leases of developed land (together with the permanent improvements thereon) on Pueblo Indian land that are not covered in another Part of these Regulations, including:

(1) Leases for residential purposes that are not covered in subpart C;

(2) Leases for religious, educational, recreational, cultural, or other public purposes; and

(3) Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this Part may authorize the construction of single-purpose or mixed-use projects designed for use by any number of lessees or occupants.



#### **§ 402 Is there a model business lease form?**

There is no model business lease form because of the need for flexibility in negotiating and writing business leases; however, the Leasing Officer or Responsible Official, as the case may be, may:

- (a) Provide other guidance, such as checklists and sample lease provisions, to assist in the lease negotiation process; and
- (b) Assist upon request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of this part.

#### **Lease Requirements**

#### **§ 411 How long may the term of a business lease run?**

- (a) A business lease must provide for a definite term, state if there is an option to renew, and if so, provide for a definite term for the renewal period. The maximum term of a lease approved under 25 U.S.C. 415(h) may not exceed 75 years (consisting of an initial term not to exceed 25 years and two renewals not to exceed 25 years).
- (b) For Pueblo Indian land, the Responsible Official will defer to the Tribal Council's determination that the lease term, including any renewal, is reasonable.
- (c) The lease may not be extended by holdover.

#### **§ 412 What must the lease include if it contains an option to renew?**

- (a) If the lease provides for an option to renew, the lease must specify:
  - (1) The time and manner in which the option must be exercised or is automatically effective;
  - (2) That confirmation of the renewal will be submitted to the Responsible Official and Leasing Officer, unless the lease provides for automatic renewal;
  - (3) Whether Pueblo consent to the renewal is required;
  - (4) That the lessee must provide notice of the renewal to the Responsible Official and Leasing Officer and any sureties and mortgagees;
  - (5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term; and
  - (6) Any other conditions for renewal (e.g., that the lessee not be in violation of the lease at the time of renewal).
- (b) The Responsible Official or Leasing Officer will record any renewal of a lease in the LRO.



**§ 413 Are there mandatory provisions that a business lease must contain?**

(a) All business leases must identify:

- (1) The tract or parcel of land being leased;
- (2) The purpose of the lease and authorized uses of the leased premises;
- (3) The parties to the lease;
- (4) The term of the lease;
- (5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements under § 415;
- (6) Payment requirements and late payment charges, including interest;
- (7) Due diligence requirements under § 417 (unless the lease is for religious, educational, recreational, cultural, or other public purposes);
- (8) Insurance requirements under § 437; and
- (9) Bonding requirements under § 434. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) Where a representative executes a lease on behalf of the Pueblo or lessee, the lease must identify the Pueblo or lessee being represented and the authority under which the action is taken.

(c) All business leases must include the following provisions:

- (1) The obligations of the lessee and its sureties to the Pueblo are also enforceable by the United States, so long as the land remains in trust or restricted status;
- (2) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;
- (3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 014;
- (4) If historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Responsible Official with jurisdiction to determine how to proceed and appropriate disposition;

(5) The Responsible Official has the right, at any reasonable time during the term of the lease and upon reasonable notice, in accordance with § 464, to enter the leased premises for inspection and to ensure compliance; and

(6) The Responsible Official may, at his or her discretion, treat as a lease violation any failure by the lessee to cooperate with the Responsible Officials' request to make appropriate records, reports, or information available for the Responsible Official's inspection and duplication.

(d) Unless the lessee would be prohibited by law from doing so, the lease must also contain the following provisions:

(1) The lessee holds the United States and the Pueblo harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises; and

(2) The lessee indemnifies the United States and the Pueblo against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, with the exception that the lessee is not required to indemnify the Pueblo for liability or cost arising from the Pueblo's negligence or willful misconduct.

(e) The Responsible Officer may treat any provision of a lease document that violates Federal law as a violation of the lease.

#### **§ 414 May permanent improvements be made under a business lease?**

The lessee may construct permanent improvements under a business lease if the business lease specifies, or provides for the development of:

(a) A plan that describes the type and location of any permanent improvements to be constructed by the lessee; and

(b) A general schedule for construction of the permanent improvements, including dates for commencement and completion of construction.

#### **§ 415 How must a business lease address ownership of permanent improvements?**

(a) A business lease must specify who will own any permanent improvements the lessee constructs during the lease term and may specify under what conditions, if any, permanent improvements the lessee constructs may be conveyed to the Pueblo during the lease term. In addition, the lease must indicate whether each specific permanent improvement the lessee constructs will:

(1) Remain on the leased premises, upon the expiration, cancellation, or termination of the lease, in a condition satisfactory to the Pueblo, and become the property of the Pueblo;

(2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as closely as possible to their condition before construction of the permanent improvements; or

(3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the permanent improvements must also provide the Pueblo with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

#### **§ 416 How will the Pueblo enforce removal requirements in a business lease?**

(a) The Responsible Official may take appropriate enforcement action to ensure removal of the permanent improvements and restoration of the premises at the lessee's expense:

(1) In consultation with the Governor and Tribal Council; and

(2) Before or after expiration, termination, or cancellation of the lease.

(b) The Responsible Official may collect and hold the performance bond or alternative form of security until removal and restoration are completed.

#### **§ 417 What requirements for due diligence must a business lease include?**

(a) If permanent improvements are to be constructed, the business lease must include due diligence requirements that require the lessee to complete construction of any permanent improvements within the schedule specified in the lease or general schedule of construction, and a process for changing the schedule by mutual consent of the parties. If construction does not occur, or is not expected to be completed, within the time period specified in the lease, the lessee must provide the Leasing Officer and Responsible Official with an explanation of good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction.

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 467.

(c) The Pueblo may waive the requirements in this section if such waiver is in the best interest of the Pueblo.

(d) The requirements of this section do not apply to leases for religious, educational, recreational, cultural, or other public purposes.

#### **§ 418 How must a business lease describe the land?**

(a) A business lease must describe the leased premises by reference to an official or certified survey, if possible. If the land cannot be so described, the lease must include one or more of the following:

- (1) A legal description;
- (2) A survey-grade global positioning system description; or
- (3) Another description prepared by a registered land surveyor that is sufficient to identify the leased premises.

#### **§ 419 May a business lease allow compatible uses?**

A business lease may provide for the Pueblo to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the business lease and consistent with the terms of the business lease. Any such use or authorization by the Pueblo will not reduce or offset the monetary compensation for the business lease.

#### *Monetary Compensation Requirements*

#### **§ 420 How much monetary compensation must be paid under a business lease of Pueblo Indian land?**

(a) A business lease of Pueblo Indian land may allow for any payment amount negotiated by the Pueblo, and the Responsible Official will defer to the Pueblo and not require a valuation if the Pueblo submits a Tribal Council authorization expressly stating that it:

- (1) Has negotiated compensation satisfactory to the Pueblo;
- (2) Waives valuation; and
- (3) Has determined that accepting such negotiated compensation and waiving valuation is in the Pueblo's best interest.

(b) The Pueblo may request, in writing, that the Responsible Official determine fair market rental, in which case the Responsible Official will use a valuation in accordance with § 422. After providing the Pueblo with the fair market rental, the Responsible Official will defer to the Pueblo's decision to allow for any payment amount negotiated by the Pueblo.

(c) If the conditions in paragraph (a) or (b) of this section are not met, Responsible Official will require that the lease provide for fair market rental based on a valuation in accordance with § 422.

**§ 421 [Reserved]**

**§ 422 How will the Responsible Official determine fair market rental for a business lease?**

(a) The Responsible Official will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before he or she approves a business lease, at the request of the Pueblo, for Pueblo Indian land.

(b) The Responsible Official will either:

(1) Prepare, or have prepared, a market analysis, appraisal, or other appropriate valuation method; or

(2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Pueblo or lessee.

(c) The Responsible Official will use or approve use of a market analysis, appraisal, or other appropriate valuation method only if it:

(1) Has been prepared in accordance with USPAP or another recognized valuation method; and

(2) Complies with Pueblo policies regarding appraisals, including third-party appraisals.

(d) The Pueblo may use competitive bidding as a valuation method.

**§ 423 When are monetary compensation payments due under a business lease?**

(a) A business lease must specify the dates on which all payments are due.

(b) Unless the lease provides otherwise, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

**§ 424 Must a business lease specify who receives monetary compensation payments?**

(a) A business lease must specify whether the lessee will make payments directly to the Pueblo (direct pay) or to the BIA on its behalf.

(b) If the lease provides that the lessee will directly pay the Pueblo, then:

(1) The lease must include provisions for proof of payment upon BIA's request.

(2) When BIA consents on behalf of the Pueblo, the lessee may make payment to BIA on behalf of the Pueblo.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(4) Unless the lease provides otherwise, compensation payments may not be made payable directly to anyone other than the Pueblo.

(5) Direct payments must continue through the duration of the lease.

**§ 425 What form of monetary compensation payment is acceptable under a business lease?**

(a) When payments are made directly to the Pueblo, the form of payment must be acceptable to the Pueblo.

(b) When payments are made to BIA, its preferred method of payment is electronic funds transfer payments. BIA will also accept:

(1) Money orders;

(2) Personal checks;

(3) Certified checks; or

(4) Cashier's checks.

(c) The BIA will not accept cash or foreign currency.

(d) The BIA will accept third-party checks only from financial institutions or Federal agencies.

**§ 426 May the business lease provide for non-monetary or varying types of compensation?**

(a) A lease may provide for the following, subject to the conditions in paragraphs (b) and (c) of this section:

(1) Alternative forms of compensation, including but not limited to, in-kind consideration and payments based on percentage of income; or

(2) Varying types of compensation at specific stages during the life of the lease, including but not limited to fixed annual payments during construction, payments based on income during an operational period, and bonuses.

(b) The Responsible Official will defer to the Tribal Council's determination that the compensation under paragraph (a) of this section is in the Pueblo's best interest, if the Pueblo submits a Tribal Council resolution or other Tribal Council authorization stating that the Tribal Council has determined the compensation under paragraph (a) of this section to be in the Pueblo's best interest.

**§ 427 Will the Pueblo notify a lessee when a payment is due under a business lease?**

The Leasing Officer may issue invoices to a lessee in advance of the dates on which payments are due under a business lease. The lessee's obligation to make these payments in a timely manner will not be excused if invoices are not issued, delivered, or received.

**§ 428 Must a business lease provide for compensation reviews or adjustments?**

(a) For a business lease of Pueblo Indian land, unless the lease provides otherwise, no periodic review of the adequacy of compensation or adjustment is required if the Tribal Council states in its authorizing resolution or other Tribal Council Authorization that it has determined that not having compensation reviews and/or adjustments is in the Pueblo's best interest.

(b) If the conditions in paragraph (a) of this section is not met, a review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease. The lease must specify:

- (1) When adjustments take effect;
- (2) Who can make adjustments;
- (3) What the adjustments are based on; and
- (4) How to resolve disputes arising from the adjustments.

(c) When a review results in the need for adjustment of compensation, the Pueblo must consent to the adjustment in accordance with § 012, unless the lease provides otherwise.

**§ 429 What other types of payments are required under a business lease?**

(a) The lessee may be required to pay additional fees, taxes, and assessments associated with the use of the land, as determined by the Pueblo, except as provided in § 017. The lessee must pay these amounts to the appropriate office at the Pueblo.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of Title 25 of the C.F.R., the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. The Responsible Official will treat failure to make these payments as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, the lessees may agree among themselves how to allocate payment of the Indian irrigation operation and maintenance charges.



Bonding and Insurance

**§ 434 Must a lessee provide a performance bond for a business lease?**

The lessee must provide a performance bond or alternative form of security, except as provided in paragraph (f) of this section.

(a) The performance bond or alternative form of security must be in an amount sufficient to secure the contractual obligations including:

(1) No less than:

(i) The highest annual rental specified in the lease, if compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by the Responsible Official in consultation with the Leasing Officer for Pueblo Indian land;

(2) The construction of any required permanent improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

(4) The restoration and reclamation of the leased premises, to their condition at the start of the lease term or some other specified condition.

(b) The performance bond or other security:

(1) Must be deposited with the Responsible Official and made payable only to the Pueblo, and may not be modified without the Pueblo's approval, except as provided in paragraph (b)(2) of this section; and

(2) For Pueblo Indian land, if the lease so provides, may be deposited with the Responsible Official and made payable to the Pueblo, and may not be modified without the approval of the Pueblo.

(c) The lease must specify the conditions under which the Responsible Official may adjust security or performance bond requirements to reflect changing conditions, including consultation with the Governor and Tribal Council before the adjustment.

(d) The Responsible Official may require that the surety provide any supporting documents needed to show that the performance bond or alternative forms of security will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The performance bond or other security instrument must require the surety to provide notice to the Responsible Official at least 60 days before canceling a performance bond or other security. This will allow the Responsible Official to notify the lessee of its obligation to provide a substitute performance bond or other security and require collection of the bond or security

before the cancellation date. Failure to provide a substitute performance bond or security is a violation of the lease.

(f) Pueblo may waive the requirement for a performance bond or alternative form of security if either:

- (1) The lease is for religious, educational, recreational, cultural, or other public purposes; or
- (2) The Leasing Officer requests it and Tribal Council determines a waiver is in the Pueblo's best interest.

(g) The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that a waiver of a performance bond or alternative form of security is in the Pueblo's best interest.

#### **§ 435 What forms of security are acceptable under a business lease?**

(a) The Responsible Official will accept a performance bond only in one of the following forms:

- (1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;
- (2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;
- (3) Negotiable Treasury securities; or
- (4) Surety bonds issued by a company approved by the U.S. Department of the Treasury.

(b) The Responsible Official may accept an alternative form of security approved by the Tribal Council that provides adequate protection for the Pueblo, including but not limited to an escrow agreement and assigned savings account.

(c) All forms of performance bonds or alternative security must, if applicable:

- (1) Indicate on their face that the Pueblo's approval is required for redemption;
- (2) Be accompanied by a statement granting full authority to the Pueblo to make an immediate claim upon or sell them if the lessee violates the lease;
- (3) Be irrevocable during the term of the performance bond or alternative security; and
- (4) Be automatically renewable during the term of the lease.

(d) The Responsible Official will not accept cash bonds.

**§ 436 What is the release process for a performance bond or alternative form of security under a business lease?**

- (a) Upon expiration, termination, or cancellation of the lease, the lessee may ask the Pueblo in writing to release the performance bond or alternative form of security.
- (b) Upon receiving a request under paragraph (a) of this section, the Responsible Official will:
  - (1) Confirm with the Leasing Officer that the lessee has complied with all lease obligations; and
  - (2) Release the performance bond or alternative form of security to the lessee, unless the Responsible Official determines that the bond or security must be redeemed to fulfill the contractual obligations.

**§ 437 Must a lessee provide insurance for a business lease?**

Except as provided in paragraph (c) of this section, a lessee must provide insurance necessary to protect the interests of the Pueblo and in the amount sufficient to protect all insurable permanent improvements on the premises.

- (a) The insurance may include property, crop, liability, and casualty insurance, depending on the Pueblo's interests to be protected.
- (b) Both the Pueblo and the United States must be identified as additional insured parties.
- (c) The Pueblo may waive the requirement for insurance upon the request of the Leasing Officer, if a waiver is determined to be in the best interest of the Pueblo by the Tribal Council, including if the lease is for less than fair market rental or nominal compensation. The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that a waiver is in the Pueblo's best interest.

Approval

**§ 438 What documents are required for Responsible Official approval of a business lease?**

A lessee or the Leasing Officer must submit the following documents to us to obtain Responsible Official approval of a business lease:

- (a) A lease executed by the Pueblo and the lessee that meets the requirements of this part;
- (b) The Tribal Council's resolution or other Tribal Council authorization for the lease and, if applicable, meeting the requirements of §§ 420(a), 426(b), and 428(a), or a separate signed certification meeting the requirements of §§ 426(b) and 428(a));
- (c) A valuation, if required under § 420 or § 421;
- (d) Proof of insurance, if required under § 437;

- (e) A performance bond or other security, if required under § 434;
- (f) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the Pueblo;
- (g) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements, including any documentation prepared under § 027(b) or required under Part G;
- (h) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (i) Where the lessee is not an entity owned and operated by the Pueblo, documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate the proposed project and the lessee's ability to successfully design, construct, or obtain the funding for a project similar to the proposed project, if appropriate;
- (j) A preliminary plan of development that describes the type and location of any permanent improvements the lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;
- (k) A legal description of the land under § 418;
- (l) Information to assist the Responsible Official in his or her evaluation of the factors in these Regulations; and
- (m) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, information such as organizational documents, certificates, filing records, and resolutions, that demonstrates that:
  - (1) The representative has authority to execute a lease;
  - (2) The lease will be enforceable against the lessee; and
  - (3) The legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located.

**§ 439 Will the Responsible Official review a proposed business lease before or during preparation of the environmental review statement?**

Upon request of the Leasing Officer, the Responsible Official will review the proposed business lease after negotiation by the parties, before or during preparation of the environmental review statement and any valuation. Within 60 days of receiving the proposed lease, the Responsible Official will provide an acknowledgement of the terms of the lease and identify any provisions

that, based on this acknowledgment review, would justify disapproval of the lease, pending results of the environmental review and any valuation.

**§ 440 What is the approval process for a business lease?**

(a) Before the Responsible Official approves a business lease, he or she must determine that the lease is in the best interest of the Pueblo. In making that determination, the Responsible Officer will:

- (1) Review the lease and supporting documents;
- (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) Assure that adequate consideration has been given to the factors in 25 U.S.C. 415(a) and (h); and
- (4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including Part G and any other Federal or tribal land use requirements.

(b) Upon receiving a business lease package, the Responsible Official will promptly notify the parties whether the package is or is not complete. A complete package includes all the information and supporting documents required under these Regulations, including but not limited to, environmental review documentation and valuation documentation, where applicable.

(1) If the business lease package is not complete, the Responsible Official's letter will identify the missing information or documents required for a complete package. If the Responsible Official does not respond to the submission of a business lease package, the parties may take action under § 463.

(2) If the business lease package is complete, the Responsible Official will notify the parties of the date of its receipt. Within 60 days of the receipt date, the Responsible Official will approve or disapprove the lease, return the package for revision, or inform the parties in writing that he or she needs additional review time. If the Responsible Official inform the parties in writing that he or she needs additional time, then:

(i) The Responsible Officials letter informing the parties that he or she needs additional review time must identify the Responsible Official's initial concerns and invite the parties to respond within 15 days of the date of the letter; and

(ii) The Responsible Official has 30 days from sending the letter informing the parties that he or she needs additional time to approve or disapprove the lease.

(c) If the Responsible Official does not meet the deadlines in this section, then the parties may take appropriate action under § 463.

(d) The Responsible Official will provide any lease approval or disapproval and the basis for the determination, along with notification of any appeal rights under Part H of these Regulations in writing to the parties to the lease.

(e) The Responsible Official will provide approved business leases on Pueblo Indian land to the lessee and provide a copy to the Leasing Officer.

**§ 441 How will the Responsible Official decide whether to approve a business lease?**

(a) The Responsible Official will approve a business lease unless:

(1) The required consents have not been obtained from the parties to the lease;

(2) The requirements of these Regulations have not been met; or

(3) The Responsible Official finds a compelling reason to withhold approval in order to protect the best interests of the Pueblo.

(b) The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that the lease is in the Pueblo's best interest.

(c) The Responsible Official may not unreasonably withhold approval of a lease.

**§ 442 When will a business lease be effective?**

(a) A business lease will be effective on the date that the Responsible Official approves the lease, even if an appeal is filed under Part H of these Regulations.

(b) The lease may specify a date on which the obligations between the parties to the business lease are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

**§ 443 Must a business lease document be recorded?**

(a) Any business lease document must be recorded in the Pueblo's LRO and the BIA's LTRO.

(1) The Responsible Official will record the lease document immediately following approval.

(2) If approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Pueblo's LRO.

(b) The Pueblo must record lease documents for the following types of leases in the Pueblo's LRO, even though Responsible Official approval is not required:

(1) Leases of Pueblo Indian land a corporate entity leases to a third party under 25 U.S.C. 477; and

(2) Leases of Pueblo Indian land under a special act of Congress authorizing leases without our approval under certain conditions.

**§ 444 Will the Pueblo require an appeal bond for an appeal of a decision on a business lease document?**

(a) If a party appeals the Responsible Official's decision on a lease, assignment, amendment, or sublease, the Tribal Council, pursuant to its authority under Section 820 of these Regulations, shall determine whether to require the appellant to post an appeal bond in an amount reasonably estimating any damage to the Pueblo from deferring any action pending appeal. The Pueblo will not require an appeal bond:

(1) For an appeal of a decision on a leasehold mortgage; or

(2) If the Pueblo is a party to the appeal and requests a waiver of the appeal bond.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the Tribal Council reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final.

Amendments

**§ 445 May the parties amend a business lease?**

The parties may amend a business lease by obtaining:

(a) The lessee's signature;

(b) The Pueblo's consent under the requirements in § 446; and

(c) The Responsible Official's approval of the amendment under §§ 447 and 448.

**§ 446 What are the consent requirements for an amendment to a business lease?**

(a) Unless the lease provides otherwise, the lessee must notify the Pueblo of the proposed amendment; and

(b) The Pueblo must consent to an amendment of a business lease.

**§ 447 What is the approval process for an amendment to a business lease?**

(a) When the Responsible Official receives an amendment that meets the requirements of this Part, he or she will notify the parties of the date he or she receives it. The Responsible Official has 30 days from receipt of the executed amendment, proof of required consents, and required documentation to approve or disapprove the amendment or inform the parties in writing that he



or she needs additional review time. The Responsible Official's determination whether to approve the amendment will be in writing and will state the basis for his approval or disapproval.

(b) The Responsible Official's letter informing the parties that he or she needs additional review time must identify his or her initial concerns and invite the parties to respond within 15 days of the date of the letter. The Responsible Official has 30 days from sending the letter informing the parties that he or she needs additional time to approve or disapprove the amendment.

(c) If the Responsible Official does not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the amendment is deemed approved to the extent consistent with tribal and Federal law. Unless the lease provides otherwise, provisions of the amendment that are inconsistent with tribal and/or Federal law will be severed and unenforceable; all other provisions of the amendment will remain in force.

**§ 448 How will the Responsible Official decide whether to approve an amendment to a business lease?**

(a) The Responsible Official may disapprove a business lease amendment only if at least one of the following is true:

- (1) The Pueblo has not consented;
- (2) The lessee's mortgagees or sureties have not consented;
- (3) The lessee is in violation of the lease;
- (4) The requirements of this Part have not been met; or
- (5) The Responsible Official finds a compelling reason to withhold approval in order to protect the best interests of the Pueblo.

(b) The Responsible Official will defer, to the maximum extent possible to the Tribal Council determination that the amendment is in the Pueblo's best interest.

(c) The Responsible Official may not unreasonably withhold approval of an amendment.

Assignments

**§ 449 May a lessee assign a business lease?**

(a) A lessee may assign a business lease by meeting the consent requirements in § 450 and obtaining the Responsible Official's approval of the assignment under §§ 451 and 452, or by meeting the conditions in paragraphs (b) or (c) of this section.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining the Responsible Official's approval of the assignment, as long as the lessee notifies Responsible Official of the assignment within 30 days after it is executed:

- (1) Not more than three distinct legal entities specified in the lease; or
- (2) The lessee's wholly owned subsidiaries.
- (c) The lessee may assign the lease without Responsible Official approval or meeting consent requirements if:
  - (1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;
  - (2) The assignee agrees in writing to assume all of the obligations and conditions of the lease; and
  - (3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 014.

**§ 450 What are the consent requirements for an assignment of a business lease?**

- (a) Unless the lease provides otherwise, the lessee must notify the Pueblo of the proposed assignment.
- (b) The Pueblo must consent to an amendment of a business lease.

**§ 451 What is the approval process for an assignment of a business lease?**

- (a) When the Responsible Official receives an assignment that meets the requirements of this Part, he or she will notify the parties of the date he or she receives it. If the Responsible Official's approval is required, he or she has 30 days from receipt of the executed assignment, proof of required consents, and required documentation to approve or disapprove the assignment. The Responsible Official's determination whether to approve the assignment will be in writing and will state the basis for his or her approval or disapproval.
- (b) If the Responsible Official does not meet the deadline in this section, the lessee or Pueblo may take appropriate action under § 463.

**§ 452 How will the Responsible Official decide whether to approve an assignment of a business lease?**

- (a) The Responsible Official may disapprove an assignment of a business lease only if at least one of the following is true:
  - (1) The Pueblo has not consented;
  - (2) The lessee's mortgagees or sureties have not consented;

- (3) The lessee is in violation of the lease;
  - (4) The assignee does not agree to be bound by the terms of the lease;
  - (5) The requirements of this Part have not been met; or
  - (6) The Responsible Official finds a compelling reason to withhold approval in order to protect the best interests of the Pueblo.
- (b) In making the finding required by paragraph (a)(6) of this section, the Responsible Official may consider whether:
- (1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and
  - (2) If a performance bond is required, the assignee has posted the bond or security and provided supporting documents that demonstrate that:
    - (i) The lease will be enforceable against the assignee; and
    - (ii) The assignee will be able to perform its obligations under the lease or assignment.
  - (c) The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that the assignment is in the Pueblo's best interest.
  - (d) The Responsible Official may not unreasonably withhold approval of an assignment.

#### Subleases

#### **§ 453 May a lessee sublease a business lease?**

- (a) A lessee may sublease a business lease by meeting the consent requirements in § 454 and obtaining approval of the sublease under §§ 455 and 456, or by meeting the conditions in paragraph (b) of this section.
- (b) Where the sublease is part of a commercial development or residential development, the lessee may sublease without meeting consent requirements or obtaining Responsible Official approval of the sublease, if:
  - (1) The lease provides for subleasing without meeting consent requirements or obtaining Responsible Official approval;
  - (2) The sublease does not relieve the lessee/sublessor of any liability; and
  - (3) The parties provide the Responsible Official and Leasing Officer with a copy of the sublease within 30 days after it is executed.

**§ 454 What are the consent requirements for a sublease of a business lease?**

(a) Unless the lease provides otherwise, the lessee must notify the Pueblo of the proposed sublease.

(b) The Pueblo must consent to a sublease of a business lease.

**§ 455 What is the approval process for a sublease of a business lease?**

(a) When the Responsible Official receives a sublease that meets the requirements of this Part, he or she will notify the parties of the date he or she receives it. If the Responsible Official's approval is required, he or she has 30 days from receipt of the executed sublease, proof of required consents, and required documentation to approve or disapprove the sublease or inform the parties in writing that he or she needs additional review time. The Responsible Official's determination whether to approve the sublease will be in writing and will state the basis for approval or disapproval.

(b) The Responsible Official's letter informing the parties that he or she needs additional review time must identify any initial concerns and invite the parties to respond within 15 days of the date of the letter. The Responsible Official has 30 days from sending the letter informing the parties that he or she needs additional time to approve or disapprove the sublease.

(c) If the Responsible Official does not meet the deadline in paragraph (a) of this section, or paragraph (b) of this section if applicable, the sublease is deemed approved to the extent consistent with tribal and Federal law. Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

**§ 456 How will the Responsible Official decide whether to approve a sublease of a business lease?**

(a) The Responsible Official may disapprove a sublease of a business lease only if at least one of the following is true:

(1) The Pueblo has not consented;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The lessee will not remain liable under the lease;

(5) The requirements of this Part have not been met; or

(6) The Responsible Official finds a compelling reason to withhold approval in order to protect the best interests of the Pueblo.

(b) In making the finding required by paragraph (a)(6) of this section, the Responsible Official may consider whether the value of any part of the leased premises not covered by the sublease would be adversely affected.

(c) The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that the sublease is in the Pueblo's best interest.

(d) The Responsible Official may not unreasonably withhold approval of a sublease.

#### Leasehold Mortgages

##### **§ 457 May a lessee mortgage a business lease?**

(a) A lessee may mortgage a business lease by meeting the consent requirements in § 458 and obtaining approval of the leasehold mortgage under §§ 459 and 460.

(b) Refer to § 449(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

##### **§ 458 What are the consent requirements for a leasehold mortgage of a business lease?**

(a) Unless the lease provides otherwise, the lessee must notify the Pueblo of the proposed leasehold mortgage.

(b) The Pueblo must consent to a leasehold mortgage of a business lease.

##### **§ 459 What is the approval process for a leasehold mortgage of a business lease?**

(a) When the Responsible Official receives a leasehold mortgage that meets the requirements of this Part, he or she will notify the parties of the date he or she received it. The Responsible Official has 20 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to approve or disapprove the leasehold mortgage. The Responsible Official's determination whether to approve the leasehold mortgage will be in writing and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet the deadline in this section, the lessee may take appropriate action under § 463.

##### **§ 460 How will the Responsible Official decide whether to approve a leasehold mortgage of a business lease?**

(a) The Responsible Official may disapprove a leasehold mortgage of a business lease only if at least one of the following is true:

(1) The Pueblo has not consented;

- (2) The lessee's mortgagees or sureties have not consented;
  - (3) The requirements of this Part have not been met; or
  - (4) The Responsible Official finds a compelling reason to withhold approval in order to protect the best interests of the Pueblo.
- (b) In making the finding required by paragraph (a)(4) of this section, the Responsible Official may consider whether:
- (1) The leasehold mortgage proceeds would be used for purposes unrelated to the leased premises; and
  - (2) The leasehold mortgage is limited to the leasehold.
- (c) The Responsible Official will defer, to the maximum extent possible, to the Tribal Council's determination that the leasehold mortgage is in the Pueblo's best interest.
- (d) The Responsible Official may not unreasonably withhold approval of a leasehold mortgage.

*Effectiveness, Compliance, and Enforcement*

**§ 461 When will an amendment, assignment, sublease, or leasehold mortgage of a business lease be effective?**

- (a) An amendment, assignment, sublease, or leasehold mortgage of a business lease will be effective when approved, even if an appeal is filed under Part H of these Regulations, except:
- (1) If the amendment or sublease was deemed approved under § 447(c) or § 455(c), the amendment or sublease becomes effective 45 days from the date the parties mailed or delivered the document to us for Responsible Official review or, if the Responsible Official sent a letter informing the parties that he or she needed additional time to approve or disapprove the lease, the amendment or sublease becomes effective 45 days from the date of the letter informing the parties that the Responsible Official needed additional time to approve or disapprove the lease; and
  - (2) An assignment that does not require approval under § 449(b) or § 449(c) or a sublease that does not require approval under § 453(b) becomes effective on the effective date specified in the assignment or sublease. If the assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.
- (b) The Responsible Official will provide copies of approved documents to the party requesting approval, to the Leasing Officer, and upon request, to other parties to the lease document.

**§ 462 What happens if the Responsible Official disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease?**

If the Responsible Official disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease, the Responsible Official will notify the parties immediately and advise the parties of their right to appeal the decision under Part H of these Regulations.

**§ 463 What happens if the Responsible Official does not meet a deadline for issuing a decision on a lease document?**

(a) If a Responsible Official does not meet a deadline for issuing a decision on a lease, assignment, or leasehold mortgage, the parties may file a written notice to compel action with the Governor, unless the Governor is acting as the Responsible Party in that instance, in which case the notice to compel action shall be filed with Tribal Council.

(b) The Governor or Tribal Council, as the case may be, has 15 days from receiving the notice to:

(1) Issue a decision; or

(2) Order the Responsible Official to issue a decision within the time set out in the order.

(c) If the original notice under subsection (a) was filed with the Governor, the parties may file a written notice to compel action with the Tribal Council, in the event:

(1) The Governor does not meet the deadline in paragraph (b) of this section;

(2) The Responsible Official does not issue a decision within the time set by the Governor under paragraph (b)(2) of this section; or

(3) The initial decision on the lease, assignment, or leasehold mortgage is with the Governor, and he does not meet the deadline for such decision.

(d) The Tribal Council has 15 days from receiving the notice to:

(1) Issue a decision; or

(2) Order the Governor or Responsible Official to issue a decision within the time set out in the order.

(e) If the Governor or Responsible Official does not issue a decision within the time set out in the order under paragraph (d)(2), then the Tribal Council must issue a decision within 15 days from the expiration of the time set out in the order.



**§ 464 May the Responsible Official investigate compliance with a business lease?**

(a) The Responsible Official may enter the leased premises at any reasonable time, upon reasonable notice, and consistent with any notice requirements under applicable tribal law and applicable lease documents, to protect the interests of the Pueblo and to determine if the lessee is in compliance with the requirements of the lease.

(b) If the Leasing Officer notifies the Responsible Official that a specific lease violation has occurred, the Responsible Official will promptly initiate an appropriate investigation. The Responsible Official, upon authorization from the Governor and Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. 415 (h)(7)(B)

**§ 465 May a business lease provide for negotiated remedies if there is a violation?**

(a) A business lease of Pueblo Indian land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides one or both parties with the power to terminate the lease:

(1) Responsible Official approval of the termination is not required;

(2) The termination is effective without Responsible Official cancellation; and

(3) The Leasing Officer or another appropriate Pueblo official must notify the Responsible Official of the termination so that he or she may record it in the LRO.

(b) The parties must notify any surety or mortgagee of any violation that may result in termination and the termination of a business lease.

(c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Responsible Official, as specified in the lease. The Pueblo may request BIA's assistance in enforcing negotiated remedies.

(d) A business lease may provide that lease violations will be addressed by a process established by the Pueblo, and that lease disputes will be resolved by a tribal court, any other court of competent jurisdiction, by the Tribal Council, or through an alternative dispute resolution method. The Pueblo shall be bound to any dispute resolution process to which it agrees in the business lease or by separate agreement, but BIA may not be bound by decisions made in such forums.

**§ 466 What will the Responsible Official do about a violation of a business lease?**

(a) In the absence of actions or proceedings described in § 465(d), or if the Pueblo has not agreed to any such actions or proceedings, the Responsible Official will follow the procedures in paragraphs (b) and (c) of this section.

(b) If the Responsible Official determines there has been a violation of the conditions of a business lease, other than a violation of payment provisions covered by paragraph (c) of this section, he or she will promptly send the lessee and any surety and mortgagee a notice of violation by certified mail, return receipt requested.

(1) The Responsible Official will send a copy of the notice of violation to the Leasing Officer and the Governor.

(2) The notice of violation will advise the lessee that, within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify the Responsible Official, the Leasing Officer, and the Governor, in writing that the violation has been cured;

(ii) Dispute the Responsible Official determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) The notice of violation may order the lessee to cease operations under the lease.

(c) A lessee's failure to pay compensation in the time and manner required by a business lease is a violation of the lease, and the Responsible Official will issue a notice of violation in accordance with this paragraph.

(1) The Responsible Official will send the lessees and any surety and mortgagee a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which the payment was due, if the lease requires that payments be made to the Pueblo; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the BIA, if the lease provides for payment to the BIA.

(2) The Responsible Official will send a copy of the notice of violation to Leasing Officer and Governor.

(3) The notice of violation will require the lessee to provide adequate proof of payment.

(d) The lessee and its sureties will continue to be responsible for the obligations in the lease until the lease expires, or is terminated or cancelled.

**§ 467 What will the Responsible Official do if the lessee does not cure a violation of a business lease on time?**

(a) If the lessee does not cure a violation of a business lease within the required time period, or provide adequate proof of payment as required in the notice of violation, the Responsible Official will consult with the Governor and Leasing Officer, and determine whether:

(1) The Pueblo should cancel the lease;

(2) The Pueblo wishes to invoke any remedies available to it under the lease;

(3) The Pueblo should invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to BIA with a request for further referral to the U.S. Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) Following consultation with the Leasing Officer and Governor, the Responsible Official may take action to recover unpaid compensation and any associated late payment charges.

(1) The Pueblo does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) The Pueblo may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Pueblo decides to cancel the lease, the Responsible Official will send the lessee and any surety and mortgagee a cancellation letter by certified mail, return receipt requested, within 5 business days of the decision. The Responsible Official will send a copy of the cancellation letter to the Leasing Officer and Governor. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of the lessee's right to appeal under Part H of this chapter, including the possibility that the Tribal Council may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action Responsible Official deems necessary to protect the Pueblo.

(d) The Pueblo may invoke any other remedies available to it under the lease, including collecting on any available performance bond, and the Pueblo may pursue any available remedies under tribal law.

**§ 468 Will late payment charges or special fees apply to delinquent payments due under a business lease?**

(a) Late payment charges will apply as specified in the lease. The failure to pay these amounts will be treated as a lease violation.

(b) The Responsible Official may assess the following special fees to cover administrative costs incurred by the Pueblo or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Pueblo under the lease:

The lessee will pay:	For:
(1) \$50.00	Any dishonored check
(2) \$15.00	Processing of each notice or demand letter
(3) 18 percent of balance due	Treasury processing following referral for collection of delinquent debt that is accepted by the BIA and Treasury

**§ 469 How will payment rights relating to a business lease be allocated?**

The business lease may allocate rights to payment for insurance proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Pueblo and the lessee. If not specified in the lease, insurance policy, order, award, judgment, or other document, the Pueblo or lessees will be entitled to receive these payments.

**§ 470 When will a cancellation of a business lease be effective?**

(a) A cancellation involving a business lease pursuant to these Regulations will not be effective until 31 days after the lessee receives a cancellation letter from the Responsible Official, or 41 days from the date he or she mailed the letter, whichever is earlier.

(b) The cancellation decision will not be effective if an appeal is filed unless the cancellation is made immediately effective under Part H of these Regulations. While a cancellation decision is ineffective, the lessee must continue to pay compensation and comply with the other terms of the lease.

**§ 471 What will the Pueblo do if a lessee remains in possession after a business lease expires or is terminated or cancelled?**

If a lessee remains in possession after the expiration, termination, or cancellation of a business lease, the Pueblo may treat the unauthorized possession as a trespass under applicable law. Unless the Pueblo and lessee are engaged in good faith negotiations with the holdover lessee to

obtain a new lease, the Pueblo may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

**§ 472 Will appeal bond requirements apply to cancellation decisions involving business leases?**

(a) Except as provided in paragraph (b) of this section, such appeal bond requirements as may be established by Tribal Council will apply to appeals from lease cancellation decisions; provided that the amount of any such bond shall reasonably estimate any damage to the Pueblo from deferring any action pending appeal.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the Tribal Council reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision by the Tribal Council is final.

**§ 473 When will the Tribal Council issue a decision on an appeal from a business leasing decision?**

The Tribal Council will issue a decision on an appeal from a business leasing decision as described in Part H.

**§ 474 What happens if the lessee abandons the leased premises?**

If a lessee abandons the leased premises, the Pueblo will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

**Part E—Wind Energy Evaluation,  
Wind Resource and Solar Resource Leases [Reserved]**

**Part F—Records**

**§ 601 Who owns the records associated with these Regulations?**

(a) Records are the property of the United States if they:

(1) Are made or received by the Pueblo in the conduct of a Federal trust function under 25 U.S.C. 450f et seq., including the operation of a trust program and not pursuant to tribal authority pursuant to 25 U.S.C. § 415(h); and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function and not pursuant with tribal authority pursuant to 25 U.S.C. § 415(h) under these Regulations.

(b) Records not covered by paragraph (a) of this section that are made or received by the Pueblo under these Regulations are the property of the Pueblo.

**§ 602 How must records associated with these Regulations be preserved?**

(a) Any organization, including a tribe or tribal organization, that has records identified in § 601(a) of these Regulations, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) The Pueblo should preserve the records identified in § 601(b) of these Regulations, for the period of time authorized by the Archivist of the United States for similar Department of the Interior records under 44 U.S.C. chapter 33. If the Pueblo does not preserve records associated with these Regulations, it may prevent the Pueblo from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

**§ 603 How does the Paperwork Reduction Act affect these Regulations?**

The Pueblo is exercising authority granted to the Pueblo under 25 U.S.C. § 415(h) pursuant to these Regulations and the Paperwork Reduction Act does not apply.

**Part G—Environmental Review**

**§ 700 Purpose of Part.** The purpose of this Part is to ensure that prior to approval of any lease pursuant to these regulations, a process is followed that:

(a) identifies and evaluates any significant effects of a proposed leasing transaction on the environment;

(b) ensures that the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impact of the proposed leasing transaction identified by the Pueblo; and

(c) the Pueblo provides responses to relevant and substantive public comments on any such impacts before the Pueblo approves the lease.

**§ 705 Definitions of Key Terms Used in the Part.** For the purpose of this Part, and any other portions of these Regulations referring to environmental review pursuant to this Part, the term:

(a) “environment” means the air, water, land, including drainage, significant and rare animal and plant species, and historic, traditional, or cultural properties and interests on or near the Pueblo;



(b) "significant effect" means an effect of a proposed leasing transaction that will have a material and demonstrable impact on the environment on or near the Pueblo;

(c) "public" means persons having a personal and direct interest in any significant effect of a proposed leasing transaction on the environment, which will be presumed to be such persons who are known to own or occupy lands within one mile of the site of the proposed lease, unless a person not within that category demonstrates a material and particular interest that will be impacted by a specific significant effect of a particular proposed leasing transaction on the environment.

#### **§ 710 Purpose of an environmental review statement and when it must be prepared.**

The purpose of an environmental review statement is to allow the Responsible Official to identify and evaluate the significant effects of a proposed leasing transaction on the environment.

The Responsible Official must ensure that an environmental review statement is prepared for all proposed leasing transactions, except those:

- (1) That will not result in any significant change in use of the leased Pueblo Indian lands; or
- (2) That are covered by an earlier environmental review statement prepared not more than twenty-four months earlier for a substantially identical leasing transaction on the same parcel as determined and documented by the Responsible Official.

#### **§ 715 Public involvement in the environmental review process.**

(a) The Responsible Official shall prepare an environmental review statement in which such Responsible Official: (1) identifies any significant effects of the proposed leasing transaction on the environment, (2) considers whether there are any commercially reasonable actions that may be taken to mitigate such significant effects on the environment as part of the proposed leasing transaction, and (3) determines whether any such actions should be required as a condition of approval of a lease.

(b) A notice of availability of the completed environmental review statement shall be (a) published in a newspaper of general circulation in a community immediately adjacent to the Pueblo, or (2) disseminated in such other manner or by such other means as may reasonably be expected to inform the public of (A) the fact that a lease is under consideration for approval pursuant to these Regulations, (B) a copy of the environmental review statement is available to any member of the public requesting it without charge, and (C) the public is being provided with a reasonable opportunity to comment on the significant effects a proposed leasing transaction may have on the environment prior to approval or disapproval of such lease under these Regulations. The notice shall invite comments on the environmental review statement during a period not less than thirty (30) days following such publication or dissemination. The Responsible Official shall consider all comments received, shall provide a response to all relevant and substantive public comments within thirty (30) days of closure of the comment



period and prior to approving the lease, and may revise environmental review statement and/or impose restrictions or requirements on the proposed leasing transaction as a condition of approval based on comments received without need of initiating another comment period.

**§ 720 Contents of an environmental review statement.**

(a) In addition to the matters described in Sections 715(a), an environmental review statement shall include brief discussions of:

(1) The proposed leasing transaction; and

(2) The need for the proposed leasing transaction.

(b) The environmental review statement need only consider the substantive features of the proposed leasing transaction and does not need to consider alternative actions or leasing transactions, including a no action alternative, but shall consider the matters described in Section 715 (a).

(c) A proposed leasing transaction may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the leasing transaction and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(d) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant effects on the environment and if there are commercially reasonable ways to mitigate them.

**§ 725 How to format an environmental review statement.**

(a) An environmental review statement may be prepared in any format useful to facilitate identification of significant effects on the environment, and appropriate public participation as described in Section 715 above.

(b) An environmental review statement may be accompanied by or incorporate any other planning or decision-making document.

**§ 730 Adopting an environmental assessment prepared by another agency, entity, or person.**

(a) A Responsible Official may adopt an environmental assessment prepared in accordance with NEPA by another agency, entity, or person, provided that the public comment and response requirements of Section 715 are substantially complied with. However, if the leasing transaction involves funding from a federal agency, the Pueblo, acting through the Responsible Official,

shall have authority to rely on the environmental review process of the applicable federal agency rather than any tribal environmental review process under these regulations.

#### **§ 735 Conclusion of the environmental review statement process.**

Upon review of the environmental impacts by the Responsible Official, publication of the environmental review statement, acceptance of public comments and delivery of the Pueblo's response to such comments, the environmental review statement process concludes and the Responsible Official may approve or disapprove of the proposed lease, subject to appeal under Part H below.

### **Part H—Appeals**

#### **§ 800 Who May Appeal Any Action Taken Pursuant to These Regulations?**

(a) Any proposed lessee of a proposed lease that is not approved pursuant to these regulations, and any other party who establishes a material interest in any proposed leasing transaction or lease approved under these regulations, may appeal the action taken on the grounds that it was taken in violation of the terms of these regulations.

(b) The proposed lessee or Leasing Officer may also appeal the Responsible Officials' action as being (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable law, and/or (ii) without reasonable support on the record before the Responsible Official taken as a whole.

#### **§ 805 On what Grounds may Appeals be Based?**

Appeals of actions taken under these regulations may be taken solely by the persons identified at Section 800(a) or (b) and may be based only upon the grounds described therein as applicable to such person's interest in the leasing transaction. In no event may the decision of the Tribal Council to decline to lease, or to withdraw a decision to lease, Pueblo Indian land prior to approval of the lease and leasing transaction under these regulations be appealed; such determination whether or not to lease Pueblo Indian land being within the sole and complete discretion of the Tribal Council.

#### **§ 810 When and How Must an Appeal be Filed?**

An appeal by a person identified in Section 800(a) or (b) and based on the grounds stated therein must be filed within fifteen (15) days of the date on the action appealed from was taken by written notice filed with the Pueblo of Sandia Tribal Court describing in reasonable detail (a) the interest of the appellant and (b)(i) alleged violation of these regulations, or (ii) if the appellee is a proposed lessee or Leasing Officer, the grounds stated in Subsection 800(b) upon which such appeal is based.

### **§ 815 How Will The Appeal Be Processed?**

The Tribal Court shall determine whether to conduct a hearing to make finding of facts and recommended determinations of law, or to commission a special master to conduct such hearing and make findings of fact and recommended determinations of law, at the Court's discretion. At the hearing, which shall be conducted within thirty (30) days following the filing of the notice of appeal, the Appellant and the Responsible Official shall be provided reasonable opportunity to admit documentary evidence, offer testimony, cross-examine the witness(es) of the other party, and to make arguments of law. Within fifteen (15) days of such hearing, the Tribal Court or appointed special master, as the case may be, shall prepare written findings of fact and recommended determinations of law with respect to such appeal and shall serve that document on the Appellant, the Responsible Official and the Tribal Council.

### **§ 820 Decision on Appeal.**

The Appellant and Responsible Official shall be permitted to make a statement to the Tribal Council on the written finding of facts and recommendation of determination of law at a time scheduled by the Tribal Council, but not to submit any further evidence or testimony. The Tribal Council shall then decide the appeal, which decision shall be final and conclusive, except as provided at Section 825(b). The Tribal Council shall issue its decision within sixty (60) days of its receipt of the written findings of fact and recommended determination of law from the Tribal Court or special master, as the case may be.

### **§ 825 May an interested party seek further review of the decision on appeal?**

(a) The Tribal Council's decision upon an appeal by a prospective lessee or Leasing Officer pursuant to Section 800(b) shall be final and binding on all parties and for all purposes.

(b) Only upon exhaustion of tribal remedies as provided in this Part H, may an interested party seek Secretarial review of an appeal pursuant with Subsection 800(a) regarding the Pueblo's compliance with these regulations in accordance with 25 U.S.C. § 415(h)(8). Any such Secretarial review shall be subject to all terms and conditions of 25 U.S.C. § 415(h)(8). The Pueblo will respond to and/or cure any Secretarial determination of non-compliance in accordance with the procedures provided by 25 U.S.C. § 415(h)(8)(C).



THE SECRETARY OF THE INTERIOR  
WASHINGTON

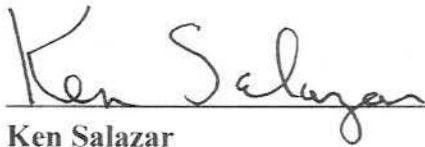
**UNITED STATES DEPARTMENT OF THE INTERIOR**

**APPROVAL OF**

**BUSINESS SITE LEASING REGULATIONS**

Pursuant to the authority granted me under 25 U.S.C. § 415(h)(3), and prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act of 2012), the attached Pueblo of Sandia Indian Lands Leasing Regulations consisting of 47 pages and signed by the Tribal Governor and attested by the Tribal Secretary and Tribal Council members, is hereby approved.

Date: March 14, 2013

  
Ken Salazar