



**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS**


APPROVAL OF

KAW NATION INDIAN LANDS LEASING ACT OF 2013

The attached Kaw Nation Indian Lands Leasing Act of 2013, prepared in accordance with the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012, the HEARTH Act of 2012, consisting of 98 pages and adopted by the Kaw Nation Tribal Council on October 19, 2013, is hereby approved.

Dated: _____

12/13/13



Assistant Secretary - Indian Affairs
United States Department of the Interior

Pursuant to the authority delegated by 209 DM 8

Kaw Nation Indian Lands Leasing Act of 2013

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Kaw Nation Indian Lands Leasing Act of 2013

Chapter A - General Provisions

Purpose, Definitions, and Scope

§1 What is the purpose of this Act?

(a) The purpose of this Act is to promote leasing on Kaw Nation Indian land for economic development and other purposes.

(b) This Act specifies:

(1) Conditions and authorities under which the Kaw Nation will approve leases of Kaw Nation Indian land;

(2) How to obtain leases;

(3) Terms and conditions required in leases; and

(4) How the Nation administers and enforces leases.

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

(d) Nothing in this Act shall be construed to waive the sovereign immunity of the Kaw Nation, its agencies, and its enterprises.

§2 How is this Act subdivided?

(a) This Act includes multiple parts relating to:

(1) General Provisions (Chapter A);

(2) Agricultural Leases (Chapter B) [Reserved];

(3) Residential Leases (Chapter C) [Reserved];

(4) Business Leases (Chapter D);

(5) Wind Energy Evaluation, Wind Resource, and Solar Resource Leases (Chapter E);

(6) Records (Chapter F);

(7) Environmental Review (Chapter G); and

(8) Appeals (Chapter H).

(b) [Reserved]

§3 What key terms do I need to know?

Act means the Kaw Nation Indian Lands Leasing Act of 2013, as may be amended from time to time.

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 Tribal Council or by an official delegated and duly authorized by Tribal Council resolution in accordance with the Kaw Nation Constitution.

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 United States Department of the Interior.

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

Cancellation or Termination means Kaw Nation action to end a lease pursuant to this Act.

Chair means the Chair of the Kaw Nation.

Consent or consenting means written authorization by the Tribal Council, on behalf of the Kaw Nation, to a specified action.

Constructive notice means notice:

(1) Posted at the tribal government office and/or tribal community building of the Kaw Nation; or

(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 Chapter G of this Act.

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 Kaw Nation 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.

General Council means the General Council of the Kaw Nation.

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 Kaw Nation or its tribally designated housing entity (TDHE); or
- (2) Substantially financed using a tribal, Federal, or State housing assistance program or TDHE.

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

Kaw Nation, Nation and/or Tribe means the Kaw Nation. When this Act refers to action to be taken by the Kaw Nation, such action may be taken by the Chair, Tribal Council, or their designee(s), as appropriate to the specific action at issue in accordance with the Kaw Nation Constitution and as appropriately authorized in writing when necessary.

Kaw Nation Indian land means any tract, or interest therein, in which the surface estate is owned by the Kaw Nation in trust or restricted status. The term also includes the surface estate of lands held by the United States in trust for a Kaw Nation Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477) or chartered under section 3 of the Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C. 503).

Lease means a written contract between the Kaw Nation or an entity of the Kaw Nation and a lessee, whereby the lessee is granted a right to possess Kaw Nation Indian land, for a specified purpose and duration. The lessee's right to possess will limit the Kaw Nation's 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 or persons designated by the Tribal Council in accordance with the Constitution of the Kaw Nation to negotiate a lease on behalf of the Kaw Nation, to make necessary arrangements related to leases, and to administer the lease if entered into, all from the Kaw Nation's commercial and economic perspective as landowner; provided that the Tribal Council may designate the Chair to directly serve in such role for certain major leasing transactions; and provided further that, in instances in which the Chair is not serving as the designated Leasing Officer, the Leasing Officer will be subordinate to and supervised by the Chair in accordance with the Kaw Nation's personnel policies.

Leasing Transaction means the anticipated use of Kaw Nation Indian land that is subject to a proposed lease to be granted upon approval under this Act.

Lessee means a person or entity who has acquired a legal right to possess Kaw Nation Indian land by a lease under this Act.

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

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

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 or the Act 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 Kaw Nation and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Kaw Nation Indian land, for a specified purpose.

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

Realty Office means the Realty Office of the Kaw Nation.

Responsible Official means the person designated and duly authorized from time to time by the Tribal Council pursuant to the Kaw Nation Constitution to oversee the regulatory requirements for approving and administering leases pursuant to this Act, including environmental review pursuant to Chapter G, provided that the duties of the Responsible Official may be delegated among several persons on the Kaw Nation staff (E.g., the Kaw Nation Realty Office, the Kaw Nation Environmental Department, Kaw Nation Legal staff), as appropriate; and provided further that in instances in which the Chair is not serving as the Responsible Official for delegated duties, such Responsible Official will be subordinate to and supervised by the Chair in accordance with the Kaw Nation'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 United States 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 or Cancellation means action by the Kaw Nation to end a lease.

Trespass means any unauthorized occupancy, use of, or action on any Kaw Nation 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 Kaw Nation.

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 Kaw Nation Indian lands, assigned by the Kaw Nation 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 Kaw Nation, including ordinances or other enactments by the Kaw Nation'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 the Kaw Nation; or
- (2) That the Kaw Nation 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.

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 Kaw Nation's enforcement of a lease under this Act no matter how "violation" or "default" is defined in the lease.

§4 To what land does this Act apply?

(a) This Act applies solely to Indian land owned by the Kaw Nation, or a federally chartered corporation of the Kaw Nation, in trust or restricted status, referred to herein as "Kaw Nation Indian Land." This Act does not apply to any fee land owned by the Kaw Nation 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 this Act.

When to Get a Lease

§5 When do I need a lease to authorize possession of Kaw Nation Indian land?

(a) If you are a person or legal entity other than an enterprise owned and operated by the Kaw Nation who is not an owner of the Kaw Nation Indian land, then you must obtain a lease under this Act from the Kaw Nation before taking possession of the land or any portion thereof, unless you are authorized to possess or use the Kaw Nation Indian land by a land use agreement not subject to this Act under §6(b) or by a permit.

(b) You must obtain a lease under this Act to possess Kaw Nation Indian land held under the corporate charter of a corporate entity of the Kaw Nation organized and established pursuant to 25 U.S.C. 477 or 25 U.S.C. 503.

(c) You do not need a lease to possess Kaw Nation Indian land if:

(1) You are the Kaw Nation, a federally chartered corporation of the Kaw Nation, or an enterprise of the Kaw Nation who owns 100 percent of the trust or restricted interests in a tract; or

(2) If you receive Tribal Council authorization to manage specific Kaw Nation Indian Land and are an agency of the Kaw Nation, an enterprise wholly owned by the Kaw Enterprise Development Authority, or another Kaw Nation 25 U.S.C. 477 or 25 U.S.C. 503 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 Kaw Nation). You must record documents in accordance with § 443.

§6 To what types of land use agreements does this Act apply?

(a) This Act applies to leases of Kaw Nation Indian land entered into under this Act

(b) This Act does not apply to:

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

This Act 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	Other tribal laws

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

§7 To what permits does this Act apply?

(a) Permits for the use of Kaw Nation Indian land do not require approval under this Act; however, the permittee 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 Kaw Nation office to allow them to maintain a copy of the permit in their records. If the Kaw Nation or an office of the Kaw Nation determines within 10 days of submission that the document does not meet the definition of “permit” but instead grants a legal interest in Kaw Nation Indian land, the Kaw Nation will notify the permittee that a lease is required under this Act.

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

<i>Permit</i>	<i>Lease</i>
Does not grant a legal interest in Indian land	Grants a legal interest in 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
Kaw Nation may terminate at any time	Kaw Nation may terminate under limited circumstances

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

§8 Does this Act apply to lease documents I submitted to BIA for approval prior to BIA approval of this Act?

This Act applies to all lease documents submitted for approval by the Kaw Nation after BIA approval of this Act. If you submitted your lease document to BIA for approval before the approval of this Act, 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 Kaw Nation for approval under this Act.

§9 Do I need Kaw Nation approval of a subleasehold mortgage?

Unless the lease or sublease provides otherwise, or the parties request, you do not need the Kaw Nation’s approval of a subleasehold mortgage. Subleasehold mortgages in excess of the total value of the subleasehold interest are prohibited. If the lease or sublease requires, or parties request, the Kaw Nation’s approval, the Kaw Nation will use the procedures governing its review of leasehold mortgages.

How to Get a Lease

§10 How do I obtain a lease?

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

(1) Prospective lessees must:

(i) Directly negotiate with the Leasing Officer, or in certain instances the Responsible Official, of the Kaw Nation for a lease; and

(ii) Provide any and all information requested or required by the Leasing Officer and Responsible Official for use in negotiating, compliance review, presentation to Tribal Council for consideration, and any other reasonable purpose consistent with this Act.

(2) Prospective lessees or the Leasing Officer of the Kaw Nation must submit the lease, and required information and analyses, to the Responsible Official and/or his duly authorized delegates for review; and

(3) The Responsible Official, and/or his duly authorized delegates must:

(i) Submit the proposed lease to the Tribal Council for approval of its terms after review by the Responsible Official for compliance with this Act and after the Responsible Official determines the lease application package is complete; 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 Chapter B for agricultural leases, Chapter C for residential leases, Chapter D for business leases, or Chapter E for wind energy evaluation, wind resource, or solar resource leases.

(b) Generally, residential, business, wind energy evaluation, wind resource and solar resource leases will not be advertised for competitive bid.

§11 How does a prospective lessee identify and contact the Kaw Nation to negotiate a lease of Kaw Nation Indian Land ?

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

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

§12 What are the consent requirements for a lease?

- (a) The Tribal Council must consent to any grant of a lease on Kaw Nation Indian land and must approve the terms of the lease in order for any lease to be valid.
- (b) Kaw Nation Indian land subject to a tribal land assignment may only be leased with the consent of Tribal Council, on behalf of the Kaw Nation, and any consent of the assignee that may be required under tribal law, custom , and tradition.

§13 Who is authorized to consent to a lease?

The Tribal Council has the sole authority to consent to a lease of Kaw Nation Indian land on behalf of the Kaw Nation.

Lease Administration

§14 What laws will apply to leases approved under this Act?

- (a) In addition to this Act itself, leases approved under this Act:
 - (1) Are subject to applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this Act;
 - (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 Kaw Nation's Indian country where the Kaw Nation 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 Kaw Nation tribal court has expressly applied State law to a specific area or circumstance on Kaw Nation Indian land in the absence of Federal or Kaw Nation tribal law.

(b) Tribal laws generally apply to land under the jurisdiction of the Kaw Nation, except to the extent that those tribal laws are inconsistent with applicable Federal law. However, this Act may be superseded, amended, or modified by other tribal laws or by amendment of this Act itself without further approval by the BIA, as long as:

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

(2) The superseding or modifying of the Act 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 Act applies only to Kaw Nation 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 Kaw Nation expressly agrees to the application of State or local law.

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

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

A lease of Kaw Nation 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.

§16 [Reserved].

§17 What taxes apply to leases approved under this Act?

(a) Permanent improvements on the leased land, without regard to ownership of those improvements, may be subject to taxation by the Kaw Nation under the Kaw Nation's Tax Code.

(b) Activities under a lease conducted on the leased premises may be subject to taxation by the Kaw Nation under the Kaw Nation's Tax Code.

(c) The leasehold or possessory interest may be subject to taxation by the Kaw Nation under the Kaw Nation's Tax Code.

§18 [Reserved]

§19 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.

§20 May a lease combine tracts?

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

(1) In the Kaw Nation's best interest; and

(2) Consistent with the efficient administration of Kaw Nation Indian land.

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

§21 What are the Responsible Official's responsibilities in overseeing the regulatory requirements for approving and administering leases?

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

(b) The Responsible Official will promote tribal control and self-determination over Kaw Nation Indian land and other land under the Kaw Nation'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 by Tribal Council for information and materials needed by Tribal Council for approval of leases, as specified in §440.

(d) The Responsible Official will work to ensure that the use of Kaw Nation Indian land is consistent with the Tribal Council's wishes on behalf of the Kaw Nation and applicable tribal law.

§22 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 this Act prevents the Kaw Nation from exercising remedies available to the Kaw Nation under the lease or applicable law.

(b) The Responsible Official will promptly respond to requests for Tribal Council approval of amendments, assignments, leasehold mortgages, and subleases, as specified in Chapters B, C, D and E.

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

(d) The Responsible Official will take emergency action as needed to preserve the value of Kaw Nation Indian land under §24.

§23 What if an Individual or entity takes possession of or uses Kaw Nation Indian land without an approved lease or other proper authorization?

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

§24 May the Kaw Nation take emergency action if Kaw Nation Indian land is threatened?

(a) The Kaw Nation 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 Kaw Nation 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 Kaw Nation will make reasonable efforts to notify all parties interested in the lease before and after taking emergency action. In all cases, the Kaw Nation will notify all parties interested in the lease after taking emergency action by actual or constructive notice. The Responsible Official will provide written notification of any action to the Chair and Tribal Council after taking emergency action and before taking emergency action when at all possible.

§25 May decisions under this Act be appealed?

Appeals from Responsible Official actions and decisions and from Tribal Council disapprovals of

leases under this Act may be taken under Chapter H of this Act, except as otherwise provided in this Act. For purposes of appeals from Responsible Official decisions under this Act, "interested party" is defined as any person whose own direct economic interest is adversely affected by an action or decision. Tribal Council decisions to approve or disapprove a lease, and to amend, assign, cancel, or terminate a lease are final.

§26 Who can answer questions about leasing?

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

§27 What documentation may the Responsible Official require in overseeing the regulatory requirements for approving leases, for administering, and for 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 Chapter G of this Act. 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 Official's request, the parties must make appropriate records, reports, or information available for the Responsible Official's 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.

§28 How may Kaw Nation Departments and Authorities obtain information about leases on Kaw Nation Indian land?

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

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

(a) For leases of Kaw Nation Indian land, when this Act requires 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), the Responsible Official will notify the lessee and the Kaw Nation Tribal Council Secretary by mail.

(b) For leases of Kaw Nation Indian land, when this Act requires the Responsible Official to notify the parties of the Tribal Council's determination to approve or disapprove a lease document, and to provide any right of appeal the Responsible Official will notify the lessee and the Kaw Nation Tribal Council Secretary by mail.

Chapter B - Agricultural Leases
RESERVED

Chapter C - Residential Leases
RESERVED

Chapter D - Business Leases

Business Leasing General Provisions

§ 401 What types of leases does this Chapter cover?

(a) This Chapter covers both ground leases (undeveloped land) and leases of developed land (together with the permanent improvements thereon) on Kaw Nation Indian land that are not covered in another Chapter of this Act, including:

- (1) Leases for agricultural purposes that are not covered in Chapter B;
- (2) Leases for residential purposes that are not covered in Chapter C;
- (2) Leases for business purposes that are not covered in Chapter E;
- (3) Leases for religious, educational, recreational, cultural, or other public purposes;
and
- (4) Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this Chapter 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 that conform to the requirements of this Act.

§ 403 - § 410 [Reserved].

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 this Act may not exceed 75 years (consisting of an initial term not to exceed 25 years and two renewals not to exceed 25 years).

(b) When negotiating leases for Kaw Nation Indian land, the Responsible Official and Leasing Officer 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 Kaw Nation 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 Kaw Nation Realty Office and the LTRO.

§ 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 and penalties;

(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 an approved lease on behalf of the Kaw Nation or lessee, the lease must identify that the Kaw Nation or the lessee is being represented by such representative and must identify 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 Kaw Nation 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 §14;

(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 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 Official's 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 Kaw Nation 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 Kaw Nation 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 Kaw Nation for liability or cost arising from the Kaw Nation's negligence or willful misconduct.

(e) The Responsible Official may treat any provision of a lease document that violates Federal or tribal 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 Kaw Nation 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 Kaw Nation, and become the property of the Kaw Nation;

(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 Kaw Nation 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 Kaw Nation 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 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 Tribal Council may waive the requirements in this section upon request if such waiver is in the best interest of the Kaw Nation.

(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 Kaw Nation 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 Kaw Nation 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 Kaw Nation Indian land?

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

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

(b) The Tribal Council 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 Tribal Council with the fair market rental, the Responsible Official will defer to the Tribal Council's decision to allow for any payment amount negotiated by the Kaw Nation.

(c) If the conditions in paragraph (a) or (b) of this section are not met, the 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 the Tribal Council approves a business lease, at the request of the Tribal Council, for Kaw Nation 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 Kaw Nation 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 deemed appropriate and authorized by the Tribal Council; and

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

(d) The Responsible Official 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) 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) Under a business lease, the lessee will make payments directly to the Kaw Nation (direct pay).

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

(2) 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.

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

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

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

Payments made directly to the Kaw Nation must be in a form of payment acceptable to the Kaw Nation.

§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 paragraph (b) 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 Kaw Nation's best interest, if the Tribal Council 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 Kaw Nation's best interest.

§427 Will the Kaw Nation notify a lessee when a payment is due under a business lease?

The Leasing Officer or Responsible Official 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 Kaw Nation 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 Kaw Nation's best interest.

(b) If the conditions in paragraph (a) of this section are 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 Kaw Nation must consent to the adjustment in accordance with §12, 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 Kaw Nation, except as provided in §17. The lessee must

pay these amounts to the appropriate office at the Kaw Nation.

(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 Kaw Nation 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 must be deposited with the Responsible Official and made payable only to the Kaw Nation, and may not be modified without the Kaw Nation's approval.

(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 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) Kaw Nation 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 or Responsible Official requests it and Tribal Council determines a waiver is in the Kaw Nation's best interest.

(g) The Responsible Official will defer to the Tribal Council's determination that a waiver of a performance bond or alternative form of security is in the Kaw Nation'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 Kaw Nation, 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 Kaw Nation's approval is required for redemption;

(2) Be accompanied by a statement granting full authority to the Kaw Nation 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 Kaw Nation 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 Kaw Nation 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 Kaw Nation's interests to be protected.

(b) Both the Kaw Nation and the United States must be identified as additional insured parties.

(c) The Tribal Council may waive the requirement for insurance upon the request of the Leasing Officer or Responsible Official, if a waiver is determined to be in the best interest of the Kaw Nation 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 Tribal Council's determination that a waiver is in the Kaw Nation's best interest.

Approval

§438 What documents are required for Tribal Council approval of a business lease?

A lessee or the Leasing Officer must submit the following documents to the Responsible Official

for review and for presentation to Tribal Council for approval of a business lease:

- (a) A lease negotiated by the Kaw Nation and the lessee that meets the requirements of this Act;
- (b) A valuation, if required under §420;
- (c) Proof of insurance, if required under §437;
- (d) A performance bond or other security, if required under §434;
- (e) Statement from the appropriate Tribal authority that the proposed use is in conformance with applicable Tribal law, if required by the Responsible Official or Tribal Council;
- (f) 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 §27(b) or required under Chapter G;
- (g) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;
- (h) Where the lessee is not an entity owned and operated by the Kaw Nation, 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;
- (i) 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;
- (j) A description of the land under §418;
- (k) Information to assist the Responsible Official's and Tribal Council's evaluation of the factors in this Act; and
- (l) 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 for compliance with this Act 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 under the terms of this Act, pending results of the environmental review and any valuation.

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

(a) Upon receiving a business lease package, the Responsible Official will review the package for compliance with this Act. Where applicable, the Responsible Official will conduct necessary measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the business lease package to Tribal Council for Tribal Council determination of approval or disapproval of the lease.

(b) The Responsible Official will promptly notify the parties whether the business lease package is or is not complete. A complete package includes all the information and supporting documents required under this Act, 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 submit the business lease package to Tribal Council for approval or disapproval of 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 informs the parties in writing that he or she needs additional time, then:

(i) The Responsible Official's 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.

(ii) The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Tribal Council for approval or disapproval the lease.

(iii) The Responsible Official has 30 days from the date of receipt of a complete revised business lease application in response to the Responsible Official's letter

described in (2) above to submit the revised package to Tribal Council for approval or disapproval 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) Upon receiving the business lease package from the Responsible Official and before approving a business lease, Tribal Council must determine that the lease is in the best interest of the Kaw Nation. In making that determination, the Tribal Council will:

- (1) Review the lease and supporting documents;
- (2) Consider the Responsible Official's findings regarding potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements, including Chapter G and any other Federal or tribal land use requirements; and
- (4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease package for compliance with this Act.

(e) The Tribal Council will approve or disapprove the business lease package by resolution or other written Tribal Council certification and, if applicable, the resolution or a separate signed Tribal Council certification will meet the requirements of §§420(a), 426(b), and 428(a).

(f) The Responsible Official will provide any lease approval or disapproval and the basis for the Tribal Council's determination, along with notification of any appeal rights under Chapter H of this Act, in writing to the parties to the lease.

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

§441 How will the Tribal Council decide whether to approve a business lease?

(a) The Tribal Council in its discretion may approve a business lease unless:

- (1) The required consents have not been obtained from the parties to the lease;
- (2) The requirements of this Act have not been met; or
- (3) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

§442 When will a business lease be effective?

(a) A business lease may become effective on the date that the Tribal Council approves the lease, even if an appeal is filed under Chapter H of this Act.

(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 Kaw Nation's Realty Office and the BIA's Land Titles and Records Office.

(1) The Responsible Official will record the lease document within one business day immediately following the date of Tribal Council approval.

(2) If approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Kaw Nation's Realty Office and the LTRO.

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

(a) If a party appeals the Responsible Official's determination of a package's noncompliance with this Act or determination of a package's incompleteness for a lease, assignment, amendment, or sublease, the Tribal Council shall determine whether to require the appellant to post an appeal bond in an amount reasonably estimating any damage to the Kaw Nation from deferring any action pending appeal. The Kaw Nation will not require an appeal bond:

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

(2) If the Kaw Nation 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 Kaw Nation's consent under the requirements in §446; and
- (c) The Tribal Council'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 Kaw Nation of the proposed amendment; and
- (b) Kaw Nation consent to an amendment of a business lease is required for the amendment to be effective.

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

- (a) When the Responsible Official receives a written amendment that meets the requirements of this Chapter, 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 amendment, proof of required consents, and required documentation to submit the amendment to Tribal Council to approve or disapprove the amendment or inform the parties in writing that he or she needs additional review time. The Tribal Council's determination whether to approve the amendment will be by resolution or other written Tribal Council certification 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 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 the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the package to Tribal Council for approval or disapproval.
- (c) 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 Tribal Council decide whether to approve an amendment to a business lease?

- (a) The Tribal Council may disapprove a business lease amendment if one or more of the following is true:
 - (1) The Kaw Nation 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 Chapter have not been met; or

(5) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

Assignments

§449 May a lessee assign a business lease?

(a) A lessee may assign a business lease meeting the consent requirements in §450 by obtaining the Tribal Council'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 Tribal Council's approval of the assignment, as long as the lessee notifies the 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 Tribal Council approval or meeting consent requirements if the assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;

(d) All assignees must agree in writing to assume all of the obligations and conditions of the lease and that any transfer of the lease will be in accordance with applicable law under §14.

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

(a) Unless the lease provides otherwise, the lessee must notify the Kaw Nation of the proposed assignment.

(b) Except as provided in §449, the Kaw Nation must consent to an assignment of a business lease for the assignment to be effective.

(c) The lessee must obtain the consent of the holders of any bonds or mortgages.

§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 Chapter, he or she will notify the parties of the date he or she receives it. If Tribal Council approval is required, the Responsible Official has 30 days from receipt of the assignment, proof of required consents, and required documentation to submit the assignment package to Tribal Council for approval or disapproval of the assignment. The Tribal Council's determination whether to approve the assignment will be by resolution or other written Tribal Council certification and will state the basis for approval or disapproval.

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

§452 How will the Tribal Council decide whether to approve an assignment of a business lease?

(a) The Tribal Council may disapprove an assignment of a business lease if one or more of the following is true:

(1) The Kaw Nation has not consented, and consent is required;

(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 Chapter have not been met; or
- (6) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

(b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council 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.

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 Tribal Council approval of the sublease, if:

- (1) The lease provides for subleasing without meeting consent requirements or obtaining Tribal Council 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 Kaw Nation of the proposed sublease.
- (b) Except as provided in §453, the Kaw Nation must consent to a sublease of a business lease in order for the sublease to be effective.

§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 Chapter, he or she will notify the parties of the date he or she receives it. If the Tribal Council's approval is required, he or she has 30 days from receipt of the sublease, proof of required consents, and required documentation to review the sublease package for compliance with this Act and to submit the sublease package to Tribal Council for approval or disapproval the sublease, or to inform the parties in writing that he or she needs additional review time. The Tribal Council's determination whether to approve the sublease will be by resolution or other written Tribal Council certification 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 the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the sublease package to Tribal Council for approval or disapproval.
- (c) Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

§456 How will the Tribal Council decide whether to approve a sublease of a business lease?

- (a) The Tribal Council may disapprove a sublease of a business lease if one or more of the following is true:
 - (1) The Kaw Nation 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 Chapter have not been met; or

(6) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

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

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.

(c) In no event shall a leasehold mortgage exceed one hundred percent (100%) of the total leasehold value.

§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 Kaw Nation of the proposed leasehold mortgage.

(b) The Kaw Nation must consent to a leasehold mortgage of a business lease for the leasehold mortgage to be effective.

§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 Chapter, he or she will notify the parties of the date he or she received it. The Responsible Official has 30 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to submit the leasehold mortgage package to Tribal Council for approval or disapproval of the leasehold mortgage. The Tribal Council's determination whether to approve the leasehold mortgage will be by resolution or other written Tribal Council certification 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 Tribal Council decide whether to approve a leasehold mortgage of a business lease?

(a) The Tribal Council may disapprove a leasehold mortgage of a business lease if one or more of

the following is true:

- (1) The Kaw Nation has not consented;

- (2) The lessee's mortgagees or sureties have not consented;
- (3) The requirements of this Chapter have not been met; or
- (4) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

(b) In making the finding required by paragraph (a)(4) of this section, the Tribal Council 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.

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 and executed by the proper parties, whichever date is later, even if an appeal is filed under Chapter H of this Act, except that 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.

(c) The Responsible Official will provide copies of approved documents to the party requesting approval, to the Tribe, and upon request, to other parties to the lease document.

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

If the Tribal Council disapproves an amendment, assignment, sublease, or leasehold mortgage of a business lease, the Responsible Official will notify the parties no later than one business day after the Tribal Council's determination. All decisions by the Tribal Council to approve or disapprove an amendment, assignment, sublease, or leasehold mortgage of a business lease are final.

§463 What happens if the Responsible Official does not meet a deadline prescribed by this

Chapter?

(a) If the Responsible Official does not meet a deadline prescribed in this Chapter regarding a lease, amendment, assignment, sublease, or leasehold mortgage, the parties may file a written notice to compel action with the Chair, unless the Chair is acting as the Responsible Official in that instance, in which case the notice to compel action shall be filed with Tribal Council.

(b) The Chair or Tribal Council, as the case may be, has 15 days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

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

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

(2) The Responsible Official does not perform the required action within the time set by the Chair under paragraph (b) of this section.

(d) If the notice by the parties was filed under paragraph (c), the Tribal Council has 15 days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(e) If the Responsible Official does not perform the required action within the time set out in the order under paragraph (d), then the Tribal Council may designate another individual or individuals to serve as the Responsible Official for the purpose of performing the required action 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 Kaw Nation 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 written authorization from the 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 Kaw Nation 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:

(l) Tribal Council approval of the termination is not required;

(2) The termination is effective without Tribal Council cancellation; and

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

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

(c) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Tribal Council, as specified in the lease. The Kaw Nation 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 Kaw Nation, and that lease disputes will be resolved by the Kaw Nation Tribal Court, by the Tribal Council, or through an alternative dispute resolution method.

§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), 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 Tribal Council.

(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 Tribal Council, 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, promptly following the date on which the payment was due, if the lease requires that payments be made to the Kaw Nation.

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

(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 Tribal Council and Leasing Officer, and determine whether:

(1) The Kaw Nation should cancel the lease;

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

(3) The Kaw Nation 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 Tribal Council, the Responsible Official may take action to recover unpaid compensation and any associated late payment charges.

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

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

(c) If the Tribal Council 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 Tribal Council. 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 any right to appeal under Chapter H, 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 the Tribal Council deems necessary to protect the Kaw Nation.

(d) The Kaw Nation may invoke any other remedies available to it under the lease, including collecting on any available performance bond, and the Kaw Nation 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 Kaw Nation 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 Kaw Nation 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 Kaw Nation and the

lessee. If not specified in the lease, insurance policy, order, award, judgment, or other document, the Kaw Nation or lessees will be entitled to receive these payments.

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

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

§471 What will the Kaw Nation 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 Kaw Nation may treat the unauthorized possession as a trespass under applicable law. Unless the Kaw Nation and lessee are engaged in good faith negotiations with the holdover lessee to obtain a new lease, the Kaw Nation 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 Kaw Nation 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 Court issue a decision on an appeal regarding a business lease?

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

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

If a lessee abandons the leased premises, the Kaw Nation 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.

**Chapter E - Wind Energy Evaluation,
Wind Resource and Solar Resource Leases**

***General Provisions Applicable to
WEELs and WSR Leases***

§501 What types of leases does this Chapter cover?

(a) This Chapter covers:

(1) Wind energy evaluation leases (WEELs), which are short-term leases that authorize possession of Kaw Nation Indian land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and

(2) Wind and solar resource (WSR) leases, which are leases that authorize possession of Kaw Nation Indian land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity:

(i) For resale on a for-profit or non-profit basis;

(ii) To a utility grid serving the public generally; or

(iii) To users within the local community (e.g., on and adjacent to Kaw Nation Indian land).

(b) If the generation of electricity is solely to support a use approved under Chapter B, Agricultural Leases; Chapter C, Residential Leases; or Chapter D, Business Leases (including religious, educational, recreational, cultural, or other public purposes), for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by Chapter B, C, or D, as appropriate.

§502 Who must obtain a WEEL or WSR lease?

(a) Anyone seeking to possess Kaw Nation Indian land to conduct activities associated with the evaluation of wind resources must obtain a WEEL, except that a WEEL is not required if use or possession of the Kaw Nation Indian land to conduct wind energy evaluation activities is authorized:

(1) Under §5(b);

(2) By a permit from the Kaw Nation under §7; or

(3) By the Kaw Nation on its land under 25 U.S.C. 81.

(b) Except as provided in §§ 5(b), §501, and paragraph (c) of this section, anyone seeking to possess Kaw Nation Indian land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR lease.

(c) When the Kaw Nation or its wholly owned tribal enterprises conduct wind and solar resource activities on Kaw Nation Indian land, it does not need a WEEL or WSR under this Chapter.

§503 Is there a model WEEL or WSR lease?

There is no model WEEL or WSR lease because of the need for flexibility in negotiating and writing WEELs and WSR 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 Chapter.

WEELs

§511 What is the purpose of a WEEL?

A WEEL is a short-term lease that allows the lessee to possess trust or restricted lands for the purpose of evaluating wind resources. The lessee may use information collected under the WEEL to assess the potential for wind energy development, and determine future placement and type of wind energy technology to use in developing the energy resource potential of the leased area.

§512 How long may the term of a WEEL run?

(a) A WEEL 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. WEELs are for project evaluation purposes, and therefore may have:

(1) An initial term that is no longer than 3 years; and

(2) One renewal period not to exceed 3 years.

(b) The exercise of the option to renew must be in writing and the WEEL 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, unless the WEEL provides for automatic renewal; and

(3) Additional consideration, if any, that will be due upon the exercise of the option to renew or the start of the renewal term.

§513 Are there mandatory provisions a WEEL must contain?

(a) All WEELs must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the WEEL and authorized uses of the leased premises;

(3) The parties to the WEEL;

(4) The term of the WEEL;

(5) The ownership of permanent improvements and the responsibility for constructing, operating, maintaining, and managing permanent improvements, under §515;

(6) Payment requirements and late payment charges, including interest; and

(7) Due diligence requirements, under §517.

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

(c) All WEELs must include the following provisions:

(1) The obligations of the lessee and its sureties to the Kaw Nation 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 leased premises;

(3) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under §14;

(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 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 §589, to enter the leased premises for inspection; 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 Official's 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 Kaw Nation harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises;

(2) The lessee indemnifies the United States and the Kaw Nation 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 Kaw Nation for liability or cost arising from the Kaw Nation's negligence or willful misconduct.

§514 May permanent improvements be made under a WEEL?

(a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of development. These facilities and associated infrastructure are considered permanent improvements. A lessee may construct permanent improvements if the WEEL specifies. An equipment installation plan must be submitted with the lease under §528(g).

(b) If any of the following changes are made to the equipment installation plan, the Tribal Council must approve the revised plan and the lessee must provide a copy of the revised plan to the Kaw Nation:

(1) Location of permanent improvements;

(2) Type of permanent improvements; or

(3) Delay of 90 days or more in any phase of development.

§515 How must a WEEL address ownership of permanent improvements?

(a) A WEEL must specify who will own any permanent improvements the lessee installs during the lease term. In addition, the WEEL must indicate whether any permanent improvements the lessee installs:

(1) Will remain on the premises upon expiration, termination, or cancellation of the lease whether or not the WEEL is followed by a WSR lease, in a condition satisfactory to the Kaw Nation;

(2) May be conveyed to the Kaw Nation during the WEEL term and under what conditions the permanent improvements may be conveyed;

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

(4) Will be disposed of by other specified means.

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

§516 How will the Responsible Official enforce removal requirements in a WEEL?

(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 Tribal Council; and

(2) After termination, cancellation, or expiration of the WEEL.

§517 What requirements for due diligence must a WEEL include?

(a) A WEEL must include due diligence requirements that require the lessee to:

(1) Install testing and monitoring facilities within 12 months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and

(2) If installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section, provide the Tribal Council and Responsible Official with an explanation of good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities.

(b) Failure of the lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to:

(1) Cancellation of the WEEL under §592; and

(2) Application of the requirement that the lessee transfer ownership of energy resource information collected under the WEEL to the Kaw Nation under §520.

§ 518 How must a WEEL describe the land?

(a) A WEEL must describe the leased premises by reference to a public or private 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.

§519 May a WEEL allow for compatible uses by the Kaw Nation?

The WEEL may provide for the Kaw Nation to use, or authorize others to use, the leased premises for other noncompeting uses compatible with the purpose of the WEEL. This may include the right to lease the premises for other compatible purposes. Any such use by the Kaw Nation will not reduce or offset the monetary compensation for the WEEL.

§520 Who owns the energy resource information obtained under the WEEL?

- (a) The WEEL must specify the ownership of any energy resource information the lessee obtains during the WEEL term.
- (b) Unless otherwise specified in the WEEL, the energy resource information the lessee obtains through the leased activity becomes the property of the Kaw Nation at the expiration, termination, or cancellation of the WEEL or upon failure by the lessee to diligently install testing and monitoring facilities on the leased premises in accordance with §517.
- (c) The Kaw Nation will keep confidential any information it is provided that is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

§521 May a lessee incorporate its WEEL analyses into its WSR lease analyses?

Any analyses a lessee uses to bring a WEEL activity into compliance with applicable laws, ordinances, rules, regulations under §14 and any other legal requirements may be incorporated by reference, as appropriate, into the analyses of a proposed WSR lease.

§522 May a WEEL contain an option for the lessee to enter into a WSR lease?

- (a) A WEEL may provide for an option period following the expiration of the WEEL term during which the lessee and the Kaw Nation may enter into a WSR lease.
- (b) The Tribal Council's approval of a WEEL that contains an option to enter into a WSR lease does not guarantee or imply Kaw Nation's approval of any WSR lease.

**WEEL Monetary Compensation
Requirements**

§523 How much compensation must be paid under a WEEL?

- (a) The WEEL must state how much compensation will be paid.
- (b) A WEEL must specify the date on which compensation will be due.
- (c) Failure to make timely payments is a violation of the WEEL and may lead to cancellation of the WEEL.
- (d) The lease compensation requirements of §§552 through 558 also apply to WEELs.

§524 Will the Kaw Nation require a valuation for a WEEL?

The Kaw Nation will not require a valuation for a WEEL.

WEEL Bonding and Insurance

§525 Must a lessee provide a performance bond for a WEEL?

The Kaw Nation will not require the lessee to provide a performance bond or alternative form of security for a WEEL.

§526 [Reserved]

§527 Must a lessee provide insurance for a WEEL?

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

- (a) The insurance may include property, crop, liability, and casualty insurance, depending on the Kaw Nation's interests to be protected.
- (b) Both the Kaw Nation and the United States must be identified as additional insured parties.
- (c) Lease insurance may be increased and extended for use as the required WSR lease insurance.
- (d) The Tribal Council may waive the requirement for insurance, if a waiver is in the best interest of the Kaw Nation, including if the lease is for less than fair market rental or nominal compensation.

WEEL Approval

§528 What documents are required for Tribal Council approval of a WEEL?

The Responsible Official must submit the following documents to the Tribal Council to obtain approval of a WEEL:

- (a) A WEEL negotiated by the Kaw Nation and the lessee that meets the requirements of this Act;
- (b) Proof of insurance, as required by §527;
- (c) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the Tribal Council;
- (d) 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 §27(b);
- (e) An equipment installation plan;
- (f) A restoration and reclamation plan (and any subsequent modifications to the plan);
- (g) Where the lessee is not an entity owned and operated by the Kaw Nation, 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;
- (h) A description of the land under §518;
- (i) If the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a Kaw Nation 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.

§529 Will the Responsible Official review a proposed WEEL before or during preparation of the environmental review documentation?

Upon request of the Leasing Officer, the Responsible Official will review the proposed WEEL for compliance with this Act after negotiation by the parties, before or during preparation of the environmental review documentation. Within 10 days of receiving the proposed WEEL, 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 under the terms of this Act, pending results of the environmental review.

§530 What is the approval process for a WEEL?

(a) Upon receiving a WEEL package, the Responsible Official will review the package for compliance with this Act. Where applicable, the Responsible Official will conduct necessary measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the WEEL package to Tribal Council for Tribal Council determination of approval or disapproval of the lease.

(b) 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 for a WEEL, including but not limited to, environmental review documentation, where applicable.

(1) If the WEEL package is not complete, the letter issued by the Responsible Official will identify the missing information or documents required for a complete package. If the Responsible Official does not respond to the submission of a WEEL package, the parties may take action under §588.

(2) If the WEEL package is complete, the Responsible Official will notify the parties of the date he or she received the complete package, and, within 20 days of the date of the Responsible Official's receipt of the package, will submit the WEEL package to Tribal Council for approval or disapproval of the WEEL, return the package for revision, or inform the parties in writing that he or she needs additional review time. If the Responsible Official informs the parties in writing that he or she needs additional time, then:

(i) The Responsible Official's 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.

(ii) The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Tribal Council for approval or disapproval the lease.

(iii) The Responsible Official has 30 days from the date of receipt of a complete revised business lease application in response to the Responsible

Official's letter described in (2) above to submit the revised package to Tribal Council for approval or disapproval the lease.

(c) If the Responsible Official does not meet the deadline in this section, then the parties may take appropriate action under §588.

(d) Upon receiving the WEEL package from the Responsible Official and before approving a WEEL, Tribal Council must determine that the WEEL is in the best interest of the Kaw Nation. In making that determination, the Tribal Council will:

- (1) Review the WEEL and supporting documents;
- (2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;
- (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and
- (4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease for compliance with this Act.

(e) The Tribal Council will approve or disapprove the WEEL by resolution or other written Tribal Council certification.

(f) The Responsible Official will provide any WEEL approval determination and the basis for the determination, along with notification of any appeal rights under Chapter H of this Act, in writing to the parties to the WEEL.

(g) The Responsible Official will provide the approved WEEL on Kaw Nation Indian land to the lessee and provide a copy to the Tribal Council.

§531 How will the Tribal Council decide whether to approve a WEEL?

(a) The Tribal Council in its discretion may approve a WEEL unless:

- (1) The required consents have not been obtained from the parties to the WEEL;
- (2) The requirements applicable to WEELs have not been met; or
- (3) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

§532 When will a WEEL be effective?

(a) A WEEL may become effective on the date on which the Tribal Council approves the WEEL, even if an appeal is filed under Chapter H of this Act.

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

(c) WEEL lease documents not requiring approval by the Tribal Council are effective upon execution by the parties, or on the effective date specified in the lease document. If the WEEL lease document does not specify an effective date, it becomes effective upon execution by the parties.

§533 Must a WEEL lease document be recorded?

(a) Any WEEL lease document must be recorded in the Kaw Nation Realty Office.

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

(2) If the Tribal Council's approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Kaw Nation Realty Office.

WEEL Administration

§534 May the parties amend, assign, sublease, or mortgage a WEEL?

The parties may amend, assign, sublease, or mortgage a WEEL by following the procedures and requirements for amending, assigning, subleasing, or mortgaging a WSR lease.

WEEL Compliance and Enforcement

§535 What effectiveness, compliance, and enforcement provisions apply to WEELs?

(a) The provisions at §586 apply to WEEL lease documents.

(b) The provisions at §§587 through 589 and 591 through 599 apply to WEELs, except that any references to §590 will apply instead to §536.

§536 Under what circumstances may a WEEL be terminated?

A WEEL must state whether, and under what conditions, the parties may terminate the WEEL.

§537 [Reserved]

WSR Leases

§538 What is the purpose of a WSR lease?

A WSR lease authorizes a lessee to possess Kaw Nation Indian land to conduct activities related to the installation, operation, and maintenance of wind and/or solar energy resource development projects. Activities include installing instrumentation facilities and infrastructure associated with the generation, transmission, and storage of electricity and other related activities. Leases for biomass or waste-to-energy purposes are governed by Chapter D of this Act.

§539 Must a WEEL be obtained before obtaining a WSR lease?

Parties may enter into a WSR lease without a WEEL. While parties may enter into a lease as a direct result of energy resource information gathered from a WEEL activity, obtaining a WEEL is not a precondition to entering into a WSR lease.

§540 How long may the term of a WSR lease run?

(a) A WSR lease must provide for a definite lease term, state if there is an option to renew, and if so, provide for a definite term for the renewal period.

(b) For Kaw Nation 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.

§541 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, unless the lease provides for automatic renewal;
- (3) Whether Kaw Nation's consent to the renewal is required;
- (4) That the lessee must provide notice of the renewal to the Responsible Official 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 will record any renewal of a lease in the Kaw Nation Realty Office.

§542 Are there mandatory provisions a WSR lease must contain?

(a) All WSR 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, WSR equipment, roads, transmission lines and related facilities under §543;
- (6) Who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission;
- (7) Payment requirements and late payment charges, including interest;
- (8) Due diligence requirements, under §546;
- (9) Insurance requirements, under §562; and
- (10) Bonding requirements under §559. 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 Kaw Nation or lessee, the lease must state such and must identify the party being represented and the authority under which the action is taken.

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

- (1) The obligations of the lessee and its sureties to the Kaw Nation 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 §14;

(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 the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact the Responsible Official 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 §589, 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 a Responsible Official 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 Kaw Nation 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 Kaw Nation 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 Kaw Nation for liability or cost arising from the Kaw Nation's negligence or willful misconduct.

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

§543 May permanent improvements be made under a WSR lease?

(a) A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity, in accordance with §19. These facilities and associated infrastructure are considered permanent improvements. A resource development plan must be submitted for approval with the lease under §563(h).

(b) If the parties agree to any of the following changes to the resource development plan after lease approval, they must submit the revised plan to the Responsible Official for the file:

(1) Location of permanent improvements;

- (2) Type of permanent improvements; or
- (3) Delay of 90 days or more in any phase of development.

§544 How must a WSR lease address ownership of permanent improvements?

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

- (1) Remain on the leased premises upon the expiration, termination, or cancellation of the lease, in a condition satisfactory to the Kaw Nation and become the property of the Kaw Nation;
- (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 installation 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 Kaw Nation with an option to take possession of and title to the permanent improvements if the improvements are not removed within the specified time period.

§545 How will the Responsible Official enforce removal requirements in a WSR 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 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 until removal and restoration are completed.

§546 What requirements for due diligence must a WSR lease include?

(a) A WSR lease must include due diligence requirements that require the lessee to:

- (1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe in the resource development plan;
- (2) If installation does not occur, or is not expected to be completed, within the time

period specified in paragraph (a)(1) of this section, provide the Responsible Official and the Tribal Council with an explanation of good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation;

(3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and

(4) Repair, place into service, or remove from the site within a time period specified in the lease any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for a continuous period specified in the lease (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).

(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 §592.

§547 How must a WSR lease describe the land?

(a) A WSR lease must describe the leased premises by reference to a private or public 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.

§548 May a WSR lease allow compatible uses?

The lease may provide for the Kaw Nation to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the WSR lease and consistent with the terms of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Kaw Nation will not reduce or offset the monetary compensation for the WSR lease.

**WSR Lease Monetary Compensation
Requirements**

§549 How much monetary compensation must be paid under a WSR lease of Kaw Nation Indian land?

(a) A WSR lease of Kaw Nation Indian land may allow for any payment negotiated by the Kaw Nation, and the Responsible Official will defer to the Tribal Council and not require a valuation if the Tribal Council submits a written resolution or other appropriate tribal authorization expressly stating that it:

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

(b) The Tribal Council 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 §551. After providing the Tribal Council with the fair market rental, the Responsible Official will defer to the Tribal Council's decision to allow for any payment amount negotiated by the Kaw Nation.

(c) If the conditions in paragraph (a) or (b) of this section are not met, the Responsible Official will require that the lease provide for fair market rental based on a valuation in accordance with §551.

§550 [Reserved]

§551 How will the Responsible Official determine fair market rental for a WSR lease?

(a) The Responsible Official will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental before Tribal Council approves a WSR lease of Kaw Nation 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 Kaw Nation 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 a valuation method deemed appropriate and authorized by the Tribal Council; and

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

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

§552 When are monetary compensation payments due under a WSR lease?

(a) A WSR 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.

§553 Must a WSR lease specify who receives monetary compensation payments?

(a) Under a WSR lease, the lessee will make payments directly to the Kaw Nation (direct pay).

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

(2) 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.

(3) Unless the lease provides otherwise, payments may not be made payable directly to anyone other than the Kaw Nation.

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

§554 What form of monetary compensation payment is acceptable under a WSR lease?

Payments made directly to the Kaw Nation must be in a form of payment acceptable to the Kaw Nation.

§555 May a WSR lease provide for non-monetary or varying types of compensation?

(a) A WSR lease may provide for the following, subject to the conditions in paragraph (b) 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 consideration at specific stages during the life of the lease, including but not limited to fixed annual payments during installation, 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 in paragraph (a) of this section is in the Kaw Nation's best interest, if the Tribal Council submits Tribal Council Resolution or other Tribal Council authorization stating that it has determined the compensation in paragraph (a) of this section to be in its best interest.

§556 Will the Leasing Officer or Responsible Official notify a lessee when a payment is due under a WSR lease?

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

§557 Must a WSR lease provide for compensation reviews or adjustments?

(a) For a WSR lease of Kaw Nation 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 a Resolution that it has determined that not having reviews and/or adjustments is in the best interest of the Kaw Nation.

(b) If the conditions in paragraph (a) of this section are 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 Kaw Nation must consent to the adjustment in accordance with §12, unless the lease provides otherwise.

§558 What other types of payments are required under a WSR 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 Kaw Nation, except as provided in §17. The lessee must pay these amounts to the appropriate office at the Kaw Nation.

(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, such as grazing, the lessees may agree among themselves how to allocate payment of the operation and maintenance charges.

WSR Lease Bonding and Insurance

§559 Must a lessee provide a performance bond for a WSR 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 the compensation is paid annually; or

(ii) If the compensation is not paid annually, another amount established by the Responsible Official in consultation with the Tribal Council for Kaw Nation Indian land;

(2) The installation 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 must be deposited with the Responsible Official and made payable only to the Kaw Nation, and may not be modified without Kaw Nation approval.

(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 Tribal Council before 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) The Responsible Official may waive the requirement for a performance bond or alternative forms of security if the Tribal Council determines a waiver is in the Kaw Nation's best interest. The Responsible Official will defer to the Tribal Council's determination that a waiver of the performance bond or alternative form of security is in the Kaw Nation's best interest.

§560 What forms of security are acceptable under a WSR 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 Kaw Nation, 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 Kaw Nation's approval is required for redemption;

(2) Be accompanied by a statement granting full authority to the Kaw Nation to make an immediate claim upon or sell them if the lessee violates the terms of 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.

§561 What is the release process for a performance bond or alternative form of security under

a WSR lease?

- (a) Upon expiration, termination, or cancellation of the lease, the lessee must ask the Kaw Nation in writing to release the performance bond or alternative form of security.
- (b) Upon receiving the 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.

§562 Must a lessee provide insurance for a WSR lease?

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

- (a) The insurance may include property, liability, and casualty insurance, depending on the Kaw Nation's interests to be protected.
- (b) Both the Kaw Nation and the United States must be identified as additional insured parties.
- (c) The Tribal Council may waive the requirement for insurance upon the request of the Leasing Officer or Responsible Official, if a waiver is determined to be in the best interest of the Kaw Nation 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 Tribal Council's determination that a waiver is in the Kaw Nation's best interest.

WSR Lease Approval

§563 What documents are required for Tribal Council approval of a WSR lease?

A lessee or the Leasing Officer must submit the following documents to the Responsible Official for review and for presentation to Tribal Council for approval of a WSR lease:

- (a) A lease negotiated by the Kaw Nation and the lessee that meets the requirements of this Act;
- (b) A valuation, if required under §549;
- (c) Proof of insurance, if required under §562;

- (d) A performance bond or other security, if required under §559;
- (e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law, if required by the Responsible Official or Tribal Council;
- (f) 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 §27(b) or required under Chapter G;
- (g) A resource development plan that describes the type and location of any permanent improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;
- (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 Kaw Nation, 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 description of the land under §547;
- (k) 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.

§564 Will the Responsible Official review a proposed WSR lease before or during preparation of the environmental review documentation?

Upon request of the Leasing Officer, the Responsible Official will review the proposed WSR lease for compliance with this Act after negotiation by the parties, before or during preparation of the environmental review documentation 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.

§565 What is the approval process for a WSR lease?

- (a) Upon receiving a WSR package, the Responsible Official will review the package for

compliance with this Act. Where applicable, the Responsible Official will conduct necessary measures under this Act, including but not limited to environmental review and valuation. Once the Responsible Official conducts the compliance review and determines that the package is complete, the Responsible Official will submit the WSR package to Tribal Council for Tribal Council determination of approval or disapproval of the lease.

(b) Upon receiving a WSR 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 this Act, including but not limited to, environmental review documentation and valuation documentation, where applicable.

(1) If the WSR 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 WSR lease package, the parties may take action under §588.

(2) If the WSR lease package is complete, the Responsible Official will notify the parties of the date of receipt. Within 60 days of the receipt date, the Responsible Official will submit the WSR package to Tribal Council for approval or disapproval of the WSR, return the package for revision, or inform the parties in writing that we need additional review time. If the Responsible Official informs the parties in writing that he or she needs additional time, then:

(i) The Responsible Official's letter informing the parties that the Responsible Official 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; and

(ii) The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in (2)(i) above to submit the package to Tribal Council for approval or disapproval the lease.

(iii) The Responsible Official has 30 days from the date of receipt of a complete revised business lease application in response to the Responsible Official's letter described in (2) above to submit the revised package to Tribal Council for approval or disapproval the lease.

(c) If the Responsible Official does not meet the deadlines in this section, then the parties may take appropriate action under §588.

(d) Upon receiving the WSR package from the Responsible Official and before approving a WSR, Tribal Council must determine that the lease is in the best interest of the Kaw Nation. In making that determination, the Tribal Council will:

(1) Review the lease and supporting documents;

(2) Consider the Responsible Official's findings regarding potential environmental

impacts and compliance with all applicable environmental laws, land use laws, and ordinances; (3) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and

(4) Have opportunity to hear recommendations regarding approval or disapproval from the Responsible Official, based on the Responsible Official's review of the lease for compliance with this Act.

(e) The Tribal Council will approve or disapprove the WSR lease by written Resolution or other Tribal Council authorization which, if applicable, must meet the requirements of §§ 549(a), 555(b), and 557(a), or for a separate signed certification, the requirements of §§555(b) and 557(a)).

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

(g) The Responsible Official will provide approved WSR leases on Kaw Nation Indian land to the lessee and provide a copy to the Leasing Officer.

§566 How will the Tribal Council decide whether to approve a WSR lease?

(a) The Tribal Council may approve a WSR lease unless:

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

(2) The requirements of this Act have not been met; or

(3) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

§567 When will a WSR lease be effective?

(a) A WSR lease may become effective on the date that the Tribal Council approves the lease, even if an appeal is filed under Chapter H of this Act.

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

§568 Must a WSR lease document be recorded?

(a) Any WSR lease document must be recorded in the Kaw Nation Realty Office and the BIA's Land Titles and Records Office.

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

approval.

(2) If the Tribal Council's approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Kaw Nation Realty Office.

§ 569 Will the Kaw Nation require an appeal bond for an appeal of a decision on a WSR lease document?

(a) If a party appeals the Responsible Official's determination of a WSR package's noncompliance with this Act or determination of a package's incompleteness for a lease, assignment, amendment, or sublease, the Tribal Council shall determine whether to require the appellant to post an appeal bond in an amount reasonably estimating any damage to the Kaw Nation from deferring any action pending appeal. The Kaw Nation will not require an appeal bond:

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

(2) If the Kaw Nation 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.

WSR Lease Amendments

§570 May the parties amend a WSR lease?

The parties may amend a WSR lease by obtaining:

(a) The lessee's signature;

(b) The Kaw Nation's consent under the requirements in §571; and

(c) The Tribal Council's approval of the amendment under §§572 and 573.

§571 What are the consent requirements for an amendment to a WSR lease?

(a) Unless the lease provides otherwise, the lessee must notify the Kaw Nation of the proposed amendment.

(b) The Kaw Nation must consent to an amendment to a WSR lease in order for the amendment to be effective.

§572 What is the approval process for an amendment to a WSR lease?

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

(b) The Responsible Official's letter informing the parties that the Responsible Official 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. The Responsible Official has 30 days from the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the amendment to Tribal Council for approval or disapproval.

(c) 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.

§573 How will the Tribal Council decide whether to approve an amendment to a WSR lease?

(a) The Tribal Council may disapprove a WSR lease amendment if one or more of the following is true:

- (1) The Kaw Nation 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 Act have not been met; or
- (5) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

WSR Lease Assignments

§574 May a lessee assign a WSR lease?

(a) A lessee may assign a WSR lease by meeting the consent requirements in §575 and obtaining our approval of the assignment under §§576 and 577 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 Tribal Council approval of the assignment, as long as the lessee notifies the 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 Tribal Council 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 §14.

§575 What are the consent requirements for an assignment of a WSR lease?

(a) Unless the lease provides otherwise, the lessee must notify the Kaw Nation of the proposed assignment.

(b) Except as provided in §574, the Kaw Nation must consent to an assignment of a WSR lease.

§576 What is the approval process for an assignment of a WSR lease?

(a) When the Responsible Official receives an assignment that meets the requirements of this Chapter, the Responsible Official will notify the parties of the date of receipt. If Tribal Council approval is required, the Responsible Official has 30 days from receipt of the assignment, proof of required consents, and required documentation to submit the assignment to Tribal Council to approve or disapprove the assignment. The Tribal Council's determination whether to approve the assignment will be in writing and will state the basis for approval or disapproval.

(b) If the Responsible Official does not meet any of the deadlines in this section, the lessee or Kaw Nation may take appropriate action under §588.

§577 How will the Tribal Council decide whether to approve an assignment of a WSR lease?

(a) The Tribal Council may disapprove an assignment of a WSR lease if one or more of the following is true:

(1) The Kaw Nation has not consented, and consent is required;

(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 Chapter have not been met; or
- (6) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

(b) In making the finding required by paragraph (a)(6) of this section, the Tribal Council 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 has 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.

WSR Lease Subleases

§578 May a lessee sublease a WSR lease?

(a) A lessee may sublease a WSR lease by meeting the consent requirements in §579 and obtaining the Tribal Council's approval of the sublease under §§580 and 581, or by meeting the conditions in paragraph (b) of this section.

(b) The lessee may sublease without meeting consent requirements or obtaining the Tribal Council's approval of the sublease, if:

- (1) The lease provides for subleasing without meeting consent requirements or obtaining the Tribal Council's approval;
- (2) The sublease does not relieve the lessee/sublessor of any liability; and
- (3) The parties provide the Responsible Official with a copy of the sublease within 30 days after it is executed.

§579 What are the consent requirements for a sublease of a WSR lease?

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

(b) Except as provided in §578, the Kaw Nation must consent to a sublease in order for the sublease to be effective.

§580 What is the approval process for a sublease of a WSR lease?

(a) When the Responsible Official receives a sublease that meets the requirements of this Chapter, he or she will notify the parties of the date he or she receives it. If the Tribal Council's approval is required, the Responsible Official has 30 days from receipt of the sublease, proof of required consents, and required documentation to submit the sublease package to Tribal Council to approve or disapprove the sublease or inform the parties in writing that he or she needs additional review time. The Tribal Council's determination whether to approve the sublease will be by resolution or other written Tribal Council certification 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 the due date of the parties' response to the Responsible Official's letter described in this paragraph to submit the sublease package to Tribal Council for approval or disapproval.

(c) Unless the lease provides otherwise, provisions of the sublease that are inconsistent with Tribal or Federal law will be severed and unenforceable; all other provisions of the sublease will remain in force.

§ 581 How will the Tribal Council decide whether to approve a sublease of a WSR lease?

(a) The Tribal Council may disapprove a sublease of a WSR lease if one or more of the following is true:

- (1) The Kaw Nation 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; and
- (5) The requirements of this Chapter have not been met; or
- (6) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

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

WSR Leasehold Mortgages

§582 May a lessee mortgage a WSR lease?

- (a) A lessee may mortgage a WSR lease by meeting the consent requirements in §583 and obtaining the Tribal Council's approval of the leasehold mortgage under §§584 and 585.
- (b) Refer to §574(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.
- (c) In no event shall a leasehold mortgage exceed one hundred percent (100%) of the total leasehold value.

§583 What are the consent requirements for a leasehold mortgage of a WSR lease?

- (a) Unless the lease provides otherwise, the lessee must notify the Kaw Nation of the proposed leasehold mortgage.
- (b) The Kaw Nation must consent to a leasehold mortgage in order for the leasehold mortgage to be effective.

§584 What is the approval process for a leasehold mortgage of a WSR lease?

- (a) When the Responsible Official receives a leasehold mortgage that meets the requirements of this Chapter, the Responsible Official will notify the parties of the date of receipt. The Responsible Official has 20 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to submit the leasehold mortgage package to Tribal Council to approve or disapprove the leasehold mortgage. The Tribal Council'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 §588.

§585 How will the Tribal Council decide whether to approve a leasehold mortgage of a WSR lease?

- (a) The Tribal Council may disapprove a leasehold mortgage of a WSR lease if one or more of the following is true:
 - (1) The Kaw Nation has not consented;
 - (2) The lessee's mortgagees or sureties have not consented;

(3) The requirements of this Act have not been met; or

(4) The Tribal Council finds a compelling reason to withhold approval in order to protect the best interests of the Kaw Nation.

(b) In making the finding required by paragraph (a)(4) of this section, the Tribal Council 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.

WSR Lease Effectiveness, Compliance, and Enforcement

§586 When will an amendment, assignment, sublease, or leasehold mortgage of a WSR lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage of a WSR lease will be effective when approved, even if an appeal is filed under Chapter H, except that an assignment that does not require Tribal Council approval under §574(b) or a sublease that does not require Tribal Council approval under §578(b) becomes effective on the effective date specified in the assignment or sublease.

(b) If the assignment or sublease does not specify the effective date, it becomes effective upon execution by the parties.

(c) The Responsible Official will provide copies of approved documents to the party requesting approval, to the Tribe, and upon request, to other parties to the lease document.

§587 What happens if the Tribal Council disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease?

If the Tribal Council disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease, the Responsible Official will notify the parties no later than one business day after the Tribal Council's determination. All decisions by the Tribal Council to approve or disapprove an amendment, assignment, sublease, or leasehold mortgage of a WSR lease are final.

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

(a) If the Responsible Official does not meet a deadline prescribed in this Chapter regarding a lease, amendment, assignment, sublease, or leasehold mortgage, the parties may file a written notice to compel action with the Chair, unless the Chair is acting as the Responsible Official in that instance, in which case the notice to compel action shall be filed with Tribal Council.

(b) The Chair or Tribal Council, as the case may be, has 15 days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

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

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

(2) The Responsible Official does not perform the required action within the time set by the Chair under paragraph (b) of this section.

(d) If the notice by the parties was filed under paragraph (c), the Tribal Council has 15 days from receiving the notice to order the Responsible Official to perform the required action within the time set out in the order.

(e) If the Responsible Official does not perform the required action within the time set out in the order under paragraph (d), then the Tribal Council may designate another individual or individuals to serve as the Responsible Official for the purpose of performing the required action within 15 days from the expiration of the time set out in the order.

§589 May the Responsible Official investigate compliance with a WSR 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 Kaw Nation 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 Tribal Council, may also provide notice to the BIA pursuant to 25 U.S.C. 415(h)(7)(B).

§590 May a WSR lease provide for negotiated remedies if there is a violation?

(a) A WSR lease of Kaw Nation 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) Tribal Council approval of the termination is not required;

(2) The termination is effective without Tribal Council cancellation; and

(3) The Leasing Officer or other appropriate Kaw Nation official must notify the Responsible Official of the termination so that the Responsible Official may record it in the Kaw Nation Realty Office.

(b) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to the Tribal Council, as specified in the lease. The Kaw Nation may request BIA assistance in enforcing negotiated remedies.

(c) A WSR lease may provide that lease violations will be addressed by the Tribe, and that lease disputes will be resolved by the Kaw Nation Tribal Court, or by Tribal Council, or through an alternative dispute resolution method.

§591 What will the Responsible Official do about a violation of a WSR lease?

(a) In the absence of actions or proceedings described in §590(c), 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 WSR lease, other than a violation of payment provisions covered by paragraph (c) of this section, the Responsible Official 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 Leasing Officer and the Tribal Council.

(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 Tribal Council, in writing that the violation has been cured;

(ii) Dispute the Responsible Official's 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 WSR 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, promptly following the date on which payment was due, if the lease requires that payments be made to the Kaw Nation.

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

(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.

§592 What will the Responsible Official do if a lessee does not cure a violation of a WSR lease on time?

(a) If the lessee does not cure a violation of a WSR 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 Tribal Council and the Leasing Officer, and determine whether:

- (1) The Kaw Nation should cancel the lease;
- (2) The Kaw Nation wishes to invoke any remedies available under the lease;
- (3) The Kaw Nation 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 the 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 Tribal Council and Leasing Officer, the Responsible Official may take action to recover unpaid compensation and any associated late payment charges.

- (1) The Kaw Nation does not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.
- (2) The Kaw Nation may still take action to recover any unpaid compensation if it cancels the lease.

(c) If the Tribal Council 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 the Tribal Council. 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 any right to appeal under Chapter H of this Act, if any, 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 the Responsible Official deems necessary to protect the Kaw Nation.

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

§593 Will late payment charges or special fees apply to delinquent payments due under a WSR 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 Kaw Nation or the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Kaw Nation 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.

§594 How will payment rights relating to WSR leases be allocated?

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

§595 When will a cancellation of a WSR lease be effective?

A cancellation involving a WSR lease will not be effective until 31 days after the lessee receives a cancellation letter from the Responsible Official, or 41 days from the date the Responsible Official mailed the letter, whichever is earlier.

§596 What will the Kaw Nation do if a lessee remains in possession after a WSR lease expires or is terminated or cancelled?

If a lessee remains in possession after the expiration, termination, or cancellation of a WSR lease, the Kaw Nation may treat the unauthorized possession as a trespass under applicable law. Unless the Kaw Nation and the lessee are engaged in good faith negotiations with the holdover lessee to obtain a new lease, the Kaw Nation may take action to recover possession, and pursue any additional remedies available under applicable law, such as a forcible entry and detainer action.

§597 Will appeal bond regulations apply to cancellation decisions involving WSR 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 Kaw Nation from deferring any action pending appeal.

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

§598 When will the Tribal Court issue a decision on an appeal from a WSR leasing decision?

The Tribal Court will issue a decision on an appeal from a WSR leasing decision pursuant to Chapter H of this Act.

§599 What happens if the lessee abandons the leased premises?

If a lessee abandons the leased premises, the Kaw Nation 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.

Chapter F-Records

§601 Who owns the records associated with this Act?

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

- (1) Are made or received by the Kaw Nation 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 to tribal authority under this Act.

(b) Records not covered by paragraph (a) of this section that are made or received by the Kaw Nation under this Act are the property of the Kaw Nation.

§602 How must records associated with this Act be preserved?

The Kaw Nation should preserve the records identified in §601(b) of this Act, 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 Kaw Nation does not preserve records associated with this Act, it may prevent the Kaw Nation 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.

Chapter G - Environmental Review

§700 What is the purpose of this Chapter?

The purpose of this Chapter is to ensure that prior to approval of any lease pursuant to this Act, 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 Kaw Nation; and
- (c) The Kaw Nation provides responses to relevant and substantive public comments on any such impacts before the Kaw Nation approves the lease.

§705 What are the definitions of key terms used in this Chapter?

For the purpose of this Chapter, and any other portions of this Act referring to environmental review pursuant to this Chapter, 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 Kaw Nation Indian Land;
- (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 Kaw Nation Indian land;
- (c) "public" means Kaw Nation tribal members having a personal and direct interest in any significant effect of a proposed leasing transaction on the environment, 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 What is the purpose of an environmental review statement and when must it 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 Kaw Nation 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 What involvement does the public have 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:

- (1) Published in a newspaper of general circulation in a community immediately adjacent to the Kaw Nation Indian land at issue; 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 this Act; (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 this Act. The notice shall invite comments on the environmental review statement during a period not more 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 What are the contents of an environmental review statement?

(a) In addition to the matters described in §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 §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 is an environmental review statement formatted?

(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 §715 above.

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

§730 May an environmental assessment prepared by another agency, entity, or person be adopted?

(a) The 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 §715 are substantially complied with. However, if the leasing transaction involves funding from a federal agency, the Kaw Nation, 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 this Act.

§735 How is the environmental review statement process concluded?

Upon review of the environmental impacts by the Responsible Official, publication of the environmental review statement, acceptance of public comments and delivery of the Kaw Nation's response to such comments, the environmental review statement process concludes and the Responsible Official may submit the proposed lease package to Tribal Council to approve or disapprove of the proposed lease, subject to appeal of the Responsible Official's determination under Chapter H below.

Chapter H-Appeals

§800 Who May Appeal Any Action Taken Pursuant to This Act?

(a) Any proposed lessee of a proposed lease that is not approved pursuant to this Act due to Responsible Official action or inaction may appeal to the Kaw Nation Tribal Courts such action or inaction taken by the Responsible Official affecting the leasing transaction on the grounds that the action or inaction was taken in violation of the terms of this Act.

(b) Any proposed lessee of a proposed lease that is not approved pursuant to this Act due to Tribal Council's determination not to approve the proposed lease may appeal to the Kaw Nation Tribal Courts such Tribal Council determination not to approve the proposed lease on the grounds that Tribal Council's determination not to approve the proposed lease is in violation of the terms of this Act.

(c) The proposed lessee or Leasing Officer may appeal to the Kaw Nation Tribal Courts the Responsible Official's action or inaction resulting in the disapproval of the proposed lease or the Tribal Council's determination not to approve the proposed lease 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 or Tribal Council taken as a whole.

(d) For purposes of this section, the term "lease" includes leases, lease amendments, lease assignments, and lease subleases.

§805 On what Grounds may Appeals be Based?

Appeals of actions taken under this Act may be taken solely by the persons identified at §800(a), (b) or (c) and may be based only upon the grounds described therein as applicable to such person's interest in the leasing transaction.

§810 When and How Must an Appeal be Filed?

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

§815 How Will The Appeal Be Processed?

The Kaw Nation Tribal Court shall process the appeal pursuant to applicable Kaw Nation law, including the Kaw Nation Civil Procedure Code.

§820 How is Decision made on Appeal?

The Kaw Nation Tribal Court shall decide the appeal pursuant to applicable Kaw Nation law, including the Kaw Nation Civil Procedure Code.

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

(a) The Kaw Nation Tribal Court's decision upon an appeal pursuant to §800 shall be final and binding on all parties and for all purposes.

(b) Only upon exhaustion of tribal remedies as provided in this Chapter H, may a party to an appeal pursuant to §800 seek Secretarial review of an appeal pursuant with Subsection 800(a) or (b) regarding the Kaw Nation's compliance with this Act 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 Kaw Nation 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).